

No. 12162

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,

VS.

RAYMOND DOWNUM and EDNA DOWNUM,
husband and wife,
Appellees.

Transcript of Record

Appeal from the United States District Court for the
District of Idaho, Northern Division

FILED
MAR 28 1949

PAUL R. O'BRIEN,
CLERK

No. 12162

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,

vs.

RAYMOND DOWNUM and EDNA DOWNUM,
husband and wife,
Appellees.

Transcript of Record

Appeal from the United States District Court for the
District of Idaho, Northern Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Amended Findings of Fact and Conclusions of Law	30
Answer to Interrogatories Propounded by De- fendant	13
Appeal:	
Certificate of Clerk to Transcript of Record on	171
Designation of Record on (DC).....	168
Designation of Record on (USCA).....	173
Motion and Order to Extend Time for Filing Record and Docketing	25
Motion and Order to Extend Time for Filing and Docketing	170
Notice of	25
Statement of Points on which Appellant In- tends to Rely Upon (DC).....	165
Statement of Points on which Appellant In- tends to Rely Upon (USCA).....	173
Certificate of Clerk to Transcript of Record on Appeal	171
Complaint	2

	PAGE
Designation of Record on Appeal (DC).....	168
Designation of Record on Appeal (USCA).....	173
Findings of Fact and Conclusions of Law.....	19
Interrogatories to Adverse Party.....	6
Answer by Defendant	13
Judgment	13
Minutes of The Court:	
June 10, 1948	17
June 11, 1948	18
October 18, 1948	29
Motion and Order to Extend Time for Filing Record and Docketing Appeal.....	25
Motion and Order to Extend Time for Filing and Docketing Appeal	170
Motion for Order Amending and Correcting Findings of Fact, Conclusions of Law and Judgment	27
Motion to Strike or in the Alternative to Amend Findings of Fact	28
Names and Addresses of Attorneys.....	1
Notice of Appeal	25
Praecipe	166
Statements of Points on which Appellant In- tends to Rely Upon Appeal (DC).....	165

	PAGE
Statement of Points on which Appellant Intends to Rely Upon Appeal (USCA)	173
Transcript of Proceedings	35
Witnesses for Defendant:	
Barclay, Alexander, Jr.	
—direct	145
—cross	151
—redirect	157, 160
—recross	160
Downum, Raymond	
—direct	161
Downum, Mrs. Edna	
—direct	162
—cross	163
Witnesses for Plaintiff:	
Beam, Roy	
—direct	54
Cahill, Joseph E.	
—direct	39
Davidson, Wallace	
—direct	58
—cross	60
Douglas, Dayton	
—direct	67
Downum, Raymond	
—direct	68, 139
—cross	140
—redirect	144

Witnesses for Plaintiff—(Continued)

Durose, Dr. Frederick W.

—direct	81
—cross	86
—redirect	89
—recross	90

Greave, William E.

—direct	91
—cross	110
—redirect	123

Poll, Dr. Robert H.

—direct	126
—cross	133
—redirect	137, 138
—recross	138

Walters, Irby

—direct	62
—cross	65

Whitbeck, Earl

—direct	42
—cross	50

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

JOHN A. CARVER,

U. S. District Attorney for the District of
Idaho;

PAUL S. BOYD,

Assistant U. S. Attorney for the District of
Idaho,
Boise, Idaho,

Attorneys for Appellant.

GEO. W. YOUNG,

502 Paulsen Bldg.,
Spokane, Washington;

W. J. NIXON,

Bonnors Ferry, Idaho,

Attorneys for Appellees. [2*]

* Page numbering appearing at foot of page of original certified
Transcript of Record.

In the District Court of the United States
for the District of Idaho,

Northern Division

No. 1709

RAYMOND DOWNUM and EDNA DOWNUM,
husband and wife,

Plaintiffs,

v.

UNITED STATES OF AMERICA,
Defendant.

COMPLAINT

Plaintiffs complain and for cause of action allege:

I.

That at all times herein mentioned the plaintiffs were and now are husband and wife and as such constitute a community under the laws of the State of Idaho.

II.

That they are citizens of the State of Idaho, residing at Bonners Ferry, Boundary County, State of Idaho.

III.

That this action is brought and maintained under and by virtue of 28 U.S.C.A. (Supp) 931.

IV.

That on or about the 14th day of May, 1947, plaintiff, Raymond Downum was driving a Model A Ford truck owned by the plaintiffs over and along a county road, two and one-half miles west of the

town of Bonners Ferry, Idaho, between the hours of 1:00 and 2:00 o'clock in the afternoon, driving in an easterly direction. That at said time and place one Corporal Clyde W. Smith, for the use and benefit and under the direction of the defendant, was driving a one and one-half ton dump truck owned by the defendant in a westerly direction over and along said road approaching the vehicle then and there being driven by the plaintiff. That said Corporal Smith did then and there drive said dump truck in a [3] careless and negligent manner and as a direct and proximate result of such carelessness and negligence, it collided with the truck of plaintiffs with great force and violence causing physical injury to plaintiff, Raymond Downum, and the destruction of plaintiffs' truck, as hereinafter more particularly alleged.

V.

That immediately prior to the collision hereinabove alleged, plaintiff Raymond Downum was a strong, healthy, able-bodied man, aged 35 years. That immediately after said collision and as a result of the carelessness and negligence with which the defendant is chargeable, said plaintiff became sick, sore, and disordered, and shall remain so for the remainder of his natural life, which according to the American Mortality Table is 31 years. Said plaintiff sustained a terrific shock to his entire nervous system; the nerves, muscles and tendons and soft tissue generally was bruised and damaged. He sustained numerous comminuted fractures to the bones of his face; a fracture of his nose; a cranial

nerve injury essential to sight producing diplopia; disfiguration and permanent scars on his face, particularly in the region of his left eye and nose; impairment of the tear duct of his left eye; damaged nerves in his right shoulder occasioning a marked weakness and atrophy in his right hand; comminuted fractures of the shafts of the right and left femurs; a fracture of the right patella. That said plaintiff's injuries were such as to cause him to suffer excruciating pain, that he presently is suffering from pain and will continue to suffer from pain and discomfort for the rest of his natural life. That prior to the sustenance of his injuries he was gainfully employed earning and capable of earning \$10.00 per day. That he will never be able to work under any circumstances requiring manual effort on his part, and that he is untrained for any [4] employment except manual labor, all to plaintiffs damage in the sum of \$100,000.00.

VI.

That plaintiff required and needed the attention and services of physicians and surgeons and became obligated therefor in the sum of \$1,085.00, which said sum is reasonable taking into consideration the kind, character and amount of such services. That plaintiff will require additional services of physicians and surgeons in an amount not presently known or ascertainable which he alleges to be in the sum of \$500.00, all to plaintiffs damage in the sum of \$1,585.00.

VII.

That said plaintiff required hospitalization and was confined thereto from the 14th day of May,

1947, until the 23rd day of December, 1947, and became obligated for such services in the sum of \$2,112.00 which said sum is reasonable in amount, taking into consideration the kind, character and amount of such services. That the plaintiff will require additional hospitalization in connection with corrective surgery required, the amount of which is not presently known or ascertainable, but which he alleges to be in the sum of \$500.00, all to plaintiffs damage in the sum of \$2,612.00.

VIII.

That said plaintiff required ambulance service, special nurses, and special surgical equipment and became obligated therefor in a total sum of \$126.88, which said sum is reasonable in amount, taking into consideration the kind, character and nature of such services and equipment, to plaintiffs damage in the sum of \$126.88.

IX.

That immediately prior to the collision hereinabove alleged, plaintiffs' truck was of the reasonable value of \$150.00 and that immediately after the collision said truck [5] had no value whatever, having been completely destroyed, all to plaintiffs damage in the sum of \$150.00.

Wherefore plaintiffs pray judgment against the defendant in the total sum of \$104,473.88, and for their costs and disbursements herein expended.

W. J. NIXON,

GEO. W. YOUNG,

Attorneys for Plaintiffs.

(Duly verified.)

[Endorsed]: Filed Feb. 24, 1948. [6]

[Title of District Court and Cause.]

INTERROGATORIES TO ADVERSE PARTY

The defendant requests each of the plaintiffs' answer under oath, in accordance with Rule 33 of the Federal Rule of Civil Procedure, to the following interrogatories:—

1.

What is the present address of the Clyde W. Smith named in paragraph 4 of the Complaint?

2.

What is the name and the address of the officer to whom you made the report of the accident described in your Complaint?

3.

Will you contend in the trial of this action that on May 14, 1947, Clyde W. Smith was a corporal in the armed forces of the United States?

4.

If your answer to question No. 3 is in the affirmative, will you contend at the time of the trial that at the time of the accident alleged in your Complaint, Clyde W. Smith was acting in line of duty?

5.

If your answer to question No. 4 is in the affirmative,

(a) What were his duties in line of duty at the time of the accident?

(b) What duties was he actually performing at the time of the accident?

6.

If your answer to question No. 4 is in the affirmative,

(a) Under what orders was he acting? [7]

(b) The name and address of the person who gave those orders.

7.

If your answer to question No. 3 is in the negative,

(a) In what capacity was Clyde W. Smith employed by the United States?

(b) What were his duties in respect to that employment?

(c) What duties was he actually performing at the time of the accident alleged in the Complaint?

8.

If your answer to question No. 3 is in the negative,

(a) Under what orders was Clyde W. Smith acting?

(b) The name and the address of the person who gave those orders.

9.

What was the point of departure and the point of destination of the truck driven by Clyde W. Smith on the trip of May 14, 1947, during which the accident occurred?

10.

Was the truck driven by Clyde W. Smith empty at the time of the accident?

11.

If your answer to question No. 9 is in the negative,

- (a) With what was the truck loaded?
- (b) Who owned the load?
- (c) Where did the load come from?
- (d) Where was the load going?
- (e) Who was paying for the delivery of the load?

12.

Was anyone riding in the truck with Clyde W. Smith, and if your answer is in the affirmative, give the name and the address of that person or those persons. [8]

13.

Who owned the truck driven by Clyde W. Smith on May 14, 1947?

14.

What was the point of departure and the point of destination of the truck driven by the plaintiffs on May 14, 1947, on the trip during which the accident occurred?

15.

Was the truck driven by the plaintiffs empty at the time of the accident?

16.

Who, if anyone, was with the plaintiffs in their truck at the time of the accident, and if anyone, give the name and the address of that person or those persons.

17.

What license number was on the truck driven by the plaintiffs at the time of the accident?

18.

Who was driving the plaintiffs' truck at the time of the accident and what was the number of the driver's license?

19.

Was the truck driven by Clyde W. Smith approaching plaintiffs' truck head-on or overtaking it from the rear?

20.

In what direction was the plaintiffs' truck proceeding and in what direction was the truck driven by Clyde W. Smith proceeding?

21.

Where, with reference to the center line of the road, did the accident occur?

22.

On which side of the center line of the road was the plaintiffs' truck at the time of the impact? [9]

23.

On which side of the center line of the road was the truck driven by Clyde W. Smith at the time of the impact?

24.

What part of the plaintiffs' truck was struck by what part of the truck driven by Mr. Smith?

25.

After the impact,

(a) How far did plaintiffs' truck travel?

(b) How far did the truck driven by Mr. Smith travel?

26.

Have you sold your truck since the accident, and, if so, the name and address of the purchaser and the amount received for the sale?

27.

Were any pictures taken of the trucks before they were removed, and, if so, what is the name and the address of the person who took the pictures and the name and the address of the person who has the pictures at this time?

28.

What is the name and the address of each doctor you will call to testify for the plaintiffs at the trial of this case?

29.

What is the name and the address of each doctor who attended the plaintiff at the time of and subsequent to the accident?

30.

Has Raymond Downum had the attention of any doctor for any reason whatever within five years prior to May 14, 1947, and, if so, give the name and address of each attending doctor? [10]

31.

If your answer to question No. 30 is in the affirmative, then state the complaints you gave each doctor or the purpose for which you sought medical attention.

32.

Were any X-rays taken to show the physical condition of Raymond Downum after the accident, and, if so, give the name and the address of the doctor who took or caused the pictures to be taken.

33.

Name the employments in which Raymond Downum has been engaged during the five years prior to May 14, 1947.

34.

Give the name and address of each employer.

35.

What has been the gross earnings of Raymond Downum during each of the five years immediately preceding May 14, 1947?

36.

In what gainful activities has Raymond Downum engaged since May 14, 1947?

37.

What education has Raymond Downum had and where was it had?

38.

What is the name and the location of each hospital in which Raymond Downum has been since May 14, 1947?

39.

What is the name and the location of each hospital in which Raymond Downum has received any treatment during the five years immediately preceding May 14, 1947?

40.

What is the name and the address of the person who furnished ambulance service alleged in the Complaint, and state where Raymond Downum was picked up by the ambulance [11] and the place to which he was delivered?

41.

What is the trade name, the body type, the model, and the year of manufacture of plaintiffs' truck?

42.

What particular acts of negligence on the part of Mr. Smith will you rely at the time of the trial?

43.

What particular acts of carelessness on the part of Mr. Smith will you rely at the time of the trial?

44.

Do you know of any other acts of negligence or carelessness, either of commission or omission, on the part of Clyde W. Smith on May 14, 1947, at the time of the accident?

JOHN A. CARVER,

United States Attorney for the District of Idaho.

E. H. CASTERLIN,

Assistant U. S. Attorney for the District of Idaho,
Boise, Idaho.

Attorneys for defendant.

(Certificate of service attached.)

[Endorsed]: Filed March 26, 1948. [12]

[Title of District Court and Cause.]

ANSWER

Answering plaintiffs' Complaint, the defendant

I.

Admits the allegations of paragraphs 1, 2, and 3.

II.

Alleges that it has no information, knowledge, or belief respecting the allegations of paragraphs 4, 5, 6, 7, 8, and 9, and on such ground, denies the same.

JOHN A. CARVER,

United States Attorney for the District of Idaho,

E. H. CASTERLIN,

Assistant U. S. Attorney for the District of Idaho.

(Certificate of service attached.)

[Endorsed]: Filed April 20, 1948. [13]

[Title of District Court and Cause.]

ANSWER TO INTERROGATORIES

PROPOUNDED BY DEFENDANT

Answer to Interrogatory 1—The present address of Clyde W. Smith named in paragraph 4 of the complaint, is not known to plaintiffs.

Answer to Interrogatory 2—Joseph E. Cahill, 1st Lt., Air Corps, Claims Officer, Hqs., Spokane Army Air Field, Spokane, Washington.

Answer to Interrogatory 3—Plaintiffs' contention shall be that Clyde W. Smith was a member

of the U. S. Army and on information and belief, they will contend that he had the rank of corporal.

Answer to Interrogatory 4—Yes.

Answer to Interrogatory 5—(a) Student truck driver; (b) driving a dump truck.

Answer to Interrogatory 6—(a) Do not know; (b) Plaintiffs' information is to the effect that the superior officer in charge of operations in which said Clyde W. Smith was engaged was Capt. Ray D. Besing.

Answer to Interrogatory 7—(a)-(b)-(c) Interrogatory 3 was answered in the affirmative; therefore we conceive no answer is required.

Answer to Interrogatory 8—We conceive no answer is required.

Answer to Interrogatory 9—Plaintiffs are informed that the point of departure [14] was the hill above the grade school in Bonners Ferry and the destination was Drainage District No. 1.

Answer to Interrogatory 10—No.

Answer to Interrogatory 11—(a) Dirt; (b) On the basis of possession, these parties would answer that the U. S. Army owned the load; (c) Grade school hill; (d) Drainage District No. 1; (e) U. S. Army.

Answer to Interrogatory 12—No.

Answer to Interrogatory 13—U. S. Army.

Answer to Interrogatory 14—From Drainage District No. 7 to plaintiffs' home in Bonners Ferry.

Answer to Interrogatory 15—Yes.

Answer to Interrogatory 16—No one.

Answer to Interrogatory 17—9B251-Idaho.

Answer to Interrogatory 18—Plaintiff Raymond Downum was driving. His driver's license was Idaho 114507.

Answer to Interrogatory 19—Head-on.

Answer to Interrogatory 20—Plaintiffs' truck was proceeding generally east, and truck driven by Clyde W. Smith was proceeding generally west.

Answer to Interrogatory 21—South.

Answer to Interrogatory 22—South.

Answer to Interrogatory 23—South.

Answer to Interrogatory 24—Front of both. [15]

Answer to Interrogatory 25—(a) None, may have been knocked a few feet backwards; (b) Do not know.

Answer to Interrogatory 26—No.

Answer to Interrogatory 27—Les Beck, Bonners Ferry, Idaho, is reported to have said he took pictures before trucks were removed.

Answer to Interrogatory 28—Dr. Fredrick W. Durose, Bonners Ferry, Idaho; Dr. William E. Grieve, Paulsen Medical & Dental Bldg., Spokane, Washington; Dr. Joseph W. Lynch, Paulsen Medical & Dental Bldg., Spokane, Washington; Dr. Robert L. Pohl, Paulsen Medical & Dental Bldg., Spokane, Washington.

Answer to Interrogatory 29—Same as those listed in the answer immediately above.

Answer to Interrogatory 30—Dr. R. M. Bowell, Bonners Ferry, Idaho.

Answer to Interrogatory 31—Indigestion.

Answer to Interrogatory 32—Yes, Dr. Durose, Dr. Greive and Dr. Pohl.

Answer to Interrogatory 33—Farming for himself.

Answer to Interrogatory 34—Self.

Answer to Interrogatory 35—1942, \$3039.22; 1943, \$3696.73; 1944, \$4104.12; 1945, \$4469.51; 1946, \$5007.50. In addition to these amounts, plaintiffs estimate they earned an additional \$525.00 per year from use of milk, butter, eggs, etc., and an additional \$150.00 per year for wood taken from the ranch.

In 1947 plaintiffs sold their ranch which they had purchased in 1940 and realized a capital gain on the land and livestock of \$6382.18.

Answer to Interrogatory 36—None. [16]

Answer to Interrogatory 37—8th Grade, Bentonville, Arkansas.

Answer to Interrogatory 38—Bonners Ferry Hospital, Bonners Ferry, Idaho, and Sacred Heart Hospital, Spokane, Washington.

Answer to Interrogatory 39—None.

Answer to Interrogatory 40—Frank Morse, Bonners Ferry, Idaho. From scene of accident to Bonners Ferry Hospital, and from Bonners Ferry Hospital to Sacred Heart Hospital in Spokane.

Answer to Interrogatory 41—1930 Model A. Ford flat bed, 1 ton.

Answer to Interrogatory 42—Smith was driving on the wrong side of the road. He was driving at a speed greater than he should have been, to-wit: about 35 miles per hour traveling in a dust cloud which obscured his vision; that he failed to observe plaintiffs' truck; that he failed to apply his brakes or steer his vehicle away from the vehicle

of the plaintiff which was as far on the right-hand side (south) of the highway as was possible for plaintiffs' vehicle to be.

Answer to Interrogatory 43—See answer to Interrogatory 42.

Answer to Interrogatory 44—None presently within the knowledge of plaintiffs.

(Duly verified.)

RAYMOND DOWNUM.

[Endorsed]: Filed April 21, 1948. [17]

[Title of District Court and Cause.]

MINUTES OF THE COURT

June 10, 1948

This cause came on regularly for trial before the Court sitting without a jury, Messrs. W. J. Nixon and George W. Young appearing as counsel for the plaintiffs; and E. H. Casterlin, Assistant District Attorney, appearing as counsel for the defendant.

After a statement of plaintiffs' cause of action by their counsel, Joseph A. Cahill, Earl Whitbick, Roy Beam, Wallace Davidson, Irby Walter, Dayton Douglas, Raymond Downum, Dr. Fredrick Durose, Wr. William E. Grieve, and Dr. Robert L. Pohl were sworn and examined as witnesses, and other evidence was introduced, on the part of the plaintiffs. [18]

[Title of District Court and Cause.]

MINUTES OF THE COURT

June 11, 1948

This cause came on for further trial before the Court, counsel for the respective parties being present.

Whereupon, Raymond Downum and Edna Downum were sworn and examined, and other evidence was introduced on the part of the plaintiffs, and here the plaintiffs rest.

Dr. Alexander Barclay, Jr., was sworn and examined as a witness on the part of the defendant, and here the defendant rests. And both sides close.

At the conclusion of the trial the Court announced: I find for the plaintiffs, \$3,000 for disability the first year; \$58,500 general damages, including future expenses; and \$3,473.88 specific expenses. The Court further announced he would allow counsel \$12,000 attorneys' fees; and ordered counsel to prepare Findings of Fact and Conclusions of Law, and Judgment and present them for approval of the Court. [19]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case came regularly on for trial before the undersigned judge of the above-entitled court sitting without a jury at Coeur d'Alene, Idaho, on the 10th day of June, 1948. The plaintiffs appeared in person and were represented by their counsel, W. J. Nixon and Geo. W. Young. The defendant was represented by John A. Carver, United States Attorney for the District of Idaho and E. H. Cas-terlin, Assistant United States Attorney for the District of Idaho. Testimony was taken and documents were offered and received in evidence, from which are made the following,

FINDINGS OF FACT

1. That the plaintiffs at the times mentioned were husband and wife, constituting a community under the laws of the State of Idaho.

2. That they are citizens of the State of Idaho, residing at Bonners Ferry, Boundary County, Idaho.

3. That this action is brought and properly maintained under and by virtue of 28 U.S.C.A. (Supp.) Sec. 931.

4. That on or about the 14th day of May, 1947, plaintiff, Raymond Downum, was driving a Model A Ford truck owned by the plaintiffs over and along a county road, two and one-half miles west of the town of Bonners Ferry, Idaho, between the

hours of 1:00 and 2:00 o'clock in the afternoon, driving in an easterly direction. That at said time and place one Corporal Clyde W. Smith, for the use and benefit and under the direction of the defendant, was driving a one and one-half ton dump truck owned by the defendant in a westerly direction over and along said road approaching the vehicle then and there being driven by the plaintiff. That said Corporal Smith [20] did then and there drive said dump truck in a careless and negligent manner and as a direct and proximate result of such carelessness and negligence, it collided with the truck of plaintiffs with great force and violence causing physical injury to plaintiff, Raymond Downum, and the destruction of plaintiffs' truck, as hereinafter more particularly found.

5. That the negligence of said Corporal Smith, driver of said truck, consisted of his driving the same on the wrong side of the roadway directly in the path of the plaintiffs' truck, without excuse or cause therefor proximately occasioning the collision between said vehicles and as a proximate result therefrom the plaintiffs sustained damage.

6. That immediately prior to the collision of said vehicles, plaintiff Raymond Downum was a strong, healthy, able-bodied man, aged thirty-five years. That immediately after said collision and as a result therefrom, said plaintiff became sick, sore and disordered, and shall remain so for the remainder of his natural life, which, according to the American Mortality Table is thirty-one years.

That said plaintiff sustained a terrific shock to his entire nervous system; the nerves, muscles, ten-

dons and soft tissue generally was bruised and damaged.

That he sustained numerous comminuted fractures to the bones of his face, a fracture of his nose, a cranial nerve injury essential to sight, occasioning him to suffer permanently from diplopia, disfiguration and permanent scars on his face in the region of his left eye and nose, impairment of the tear duct of his left eye, damaged nerves in his right shoulder occasioning a marked weakness and atrophy in his right hand, diminishing normal functional use thereof, comminuted fractures of the shafts of the right and left femurs, a fracture of the right patella. [21]

That said plaintiff's injuries were such as to cause him to suffer excruciating pain; that he is presently suffering from pain and will in all reasonable certainty continue to suffer from pain and discomfort for the rest of his natural life.

That said plaintiff was totally incapacitated for all purposes for a period of one year following his injuries. That at the time of trial he was incapacitated for all purposes to an extent of from seventy-five to eighty per cent of total disability. That in all reasonable certainty he will be totally incapacitated for all purposes for the remainder of his natural life in a degree of at least sixty per cent.

7. That for a period of five years prior to his injury, the plaintiff, Raymond Downum, earned an income averaging in excess of \$4,000.00 per annum. That at the time of his injury and for some months prior thereto the said plaintiff was gainfully employed and was earning \$10.00 per day. That it

would appear from all of the evidence that said plaintiff was capable of earning at least \$3,000.00 per annum.

8. That the plaintiffs sustained special damages for damage to truck, hospital and medical care, including ambulance service and special nursing in the sum of \$3,473.88.

9. That said plaintiffs sustained a loss of \$3,000.00 in earnings for the first twelve months following the injury of said plaintiff, Raymond Downum.

10. That the plaintiffs will in the future sustain a general loss in earnings as a proximate result of said injuries in an amount found by the Court to be \$58,500.00.

11. That the plaintiffs required the services of attorneys and counselors at law for the preparation and maintenance of this action, and the Court finds \$12,000.00 is a reasonable amount to allow said attorneys for their services, [22] which sum shall be paid out of, but not in addition to the total amount herein found to be due the plaintiffs.

Done in open Court this 21st day of June, 1948.

CHASE A. CLARK,

Judge.

From the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

1. That the plaintiffs should have and recover judgment of and from the defendant in the total sum of \$64,973.88.

2. That the sum of \$12,000.00 should be allowed W. J. Nixon and Geo. W. Young as and for at-

torneys fees, said sum to be paid out of but not in addition to the total amount hereinabove found to be due the plaintiffs.

3. That the plaintiffs should have and recover costs against the defendant.

Done in open Court this 21st day of June, 1948.

CHASE A. CLARK,
Judge.

[Endorsed]: Filed June 22, 1948. [23]

In the District Court of the United States for the
District of Idaho Northern Division

No. 1709

RAYMOND DOWNUM and EDNA DOWNUM,
husband and wife,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

This case came regularly on for trial before the undersigned judge of the above-entitled court sitting without a jury at Coeur d'Alene, Idaho, on the 10th day of June, 1948. The plaintiffs appeared in person and were represented by their counsel, W. J. Nixon and Geo. W. Young. The defendant was represented by John A. Carver, United States Attorney for the District of Idaho, and E. H. Casterlin, Assistant United States Attorney for the District of Idaho. Testimony was taken and documents were

offered and received in evidence, from which the Court has heretofore made its Findings of Fact and Conclusions of Law, and being fully advised in the premises, does

Order, Adjudge and Decree that the plaintiffs have and recover judgment of and from the defendant in the total sum of \$64,973.88; and does further

Order, Adjudge and Decree that the sum of \$12,000.00 be and the same hereby is allowed W. J. Nixon and Geo. W. Young as and for attorneys fees, said sum to be paid out of but not in addition to the total amount hereinabove adjudged to be due the plaintiffs; and does further

Order, Adjudge and Decree that the plaintiffs have and recover costs against the defendant.

Done in open Court this 21st day of June, 1948.

CHASE A. CLARK,
Judge.

[Endorsed]: Filed June 22, 1948. [24]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the United States of America, defendant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from that certain judgment made and entered herein on June 22, 1948.

JOHN A. CARVER,

United States Attorney for
the District of Idaho,

E. H. CASTERLIN,

Assistant U. S. Attorney for
the District of Idaho,
Attorneys for appellant. [25]

[Endorsed]: Filed Aug. 19, 1948.

[Title of District Court and Cause.]

MOTION TO EXTEND TIME FOR FILING RECORD AND DOCKETING APPEAL

The United States of America, the Appellant, shows to the Court as follows:

I.

Notice of Appeal to the United States Circuit Court of Appeals for the Ninth Circuit was filed herein on August 19, 1948.

II.

The Notice of Appeal was filed for the purpose of protecting the interests of the United States until the Attorney General could determine if the

III.

appeal is to be perfected or dismissed.

The Attorney General has not advised this office of its decision and the time for docketing in the Circuit Court will expire on September 28, 1948.

Wherefore, appellant moves the Court for an order extending the time within which the record on appeal may be filed and the appeal docketed in the Circuit Court of Appeals until November 22, 1948.

/s/ JOHN A. CARVER,

United States Attorney for the
District of Idaho.

/s/ PAUL S. BOYD,

Assistant United States Attorney for the
District of Idaho.

ORDER

Upon motion of the appellant, good cause appearing therefor,

It is ordered that the time within which the record on appeal may be filed and the appeal docketed in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same hereby is, extended to the 22 day of November, 1948.

Dated this 22 day of September, 1948.

CHASE A. CLARK,
District Judge.

[Endorsed]: Filed Sept. 23, 1948. [27]

[Title of District Court and Cause.]

MOTION FOR ORDER AMENDING AND CORRECTING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT.

Comes now the defendant and moves the court for an order amending and correcting the Findings of Fact and Conclusions of Law and the Judgment heretofore entered in this matter and represents to the Court:

I.

That a mistake has been made in computing the amount awarded for the general damages assessed by the Court in this matter.

II.

That the Court, in computing said award for the general damages assessed improperly, included costs, charges and other factors in computing said award, and all that the plaintiff is entitled to recover is a sum which takes into account the probable future expectation of earnings and to receive that sum discounted for present payment.

III.

That the cost of an annuity sufficient to enable the plaintiff to recover or produce an income equal to the plaintiff's earning capacity with his disability for his life expectancy, as set forth in the Findings of Fact and Conclusions of Law, and to receive that sum discounted for present payment, is approximately \$36,000.00, and not \$58,500.00 as erroneously found by the Court.

Wherefore, defendant prays that the Court amend its Findings of Fact and Conclusions of Law and the Judgment in harmony with the law and the fact. [28]

JOHN A. CARVER,

United States Attorney for the
District of Idaho.

PAUL S. BOYD,

Assistant United States Attorney for the
District of Idaho.

(Affidavit of Service attached.)

[Endorsed]: Filed Sept. 29, 1948. [29]

[Title of District Court and Cause.]

MOTION TO STRIKE OR IN THE ALTERNATIVE TO AMEND FINDINGS OF FACT.

Come now the above named plaintiffs and move the court for an order striking the Motion for Order Amending and Correcting Findings of Fact, Conclusions of Law, and Judgment herein.

This motion is based upon all of the records and files herein and upon Rule 59 of the Federal Rules of Civil Procedure.

In the event that this motion is denied, and in that event only, then plaintiffs move the Court for an order amending Finding of Fact No. 6 which presently states that the plaintiff, Raymond Downum, has a life expectancy of 31 years, to state that

the plaintiff has a life expectancy of 39 years according to the Mortality Table contained in the World Almanac and Book of Facts for 1948, p. 449.

GEO. W. YOUNG,

W. J. NIXON,

Attorneys for the Plaintiffs.

(Certificate of Service attached.)

[Endorsed]: Filed Oct. 18, 1948. [30]

[Title of District Court and Cause.]

MINUTES OF THE COURT OF

October 18, 1948

This cause came on regularly in open court on defendant's Motion for Order Amending and Correcting Findings of Fact and Conclusions of Law and Judgment, and plaintiffs' Motion to Strike or in the Alternative to Amend Findings of Fact.

At the conclusion of argument by respective counsel, the Court announced that the Motion to Correct Findings, etc., will be sustained. Counsel for plaintiffs was instructed to redraw Findings in accordance with the Court's oral opinion.

The Motion of plaintiffs to correct Findings in regard to the life expectancy will be denied.

On motion of counsel for plaintiffs, the Court ordered the record to show that counsel for plaintiffs took exception to "pain and suffering" in corrected Findings. [31]

[Title of District Court and Cause.]

AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case came regularly on for trial before the undersigned judge of the above entitled court sitting without a jury at Couer d'Alene, Idaho, on the 10th day of June, 1948. The plaitniffs appeared in person and were represented by their counsel, W. J. Nixon and Geo. W. Young. The defendant was represented by John A. Carver, United States Attorney for the District of Idaho and E. H. Casterlin, Assistant United States Attorney for the District of Idaho. Findings of Fact and Conclusions of Law and Judgment were entered herein on the 22nd day of June, 1948, and thereafter the defendant made its Motion for Order Amending and Correcting Findings of Fact, Conclusions of Law and Judgment, and plaintiffs made their motion to strike or in the alternative to amend Findings of Fact. That the Motion to Strike or in the alternative to Amend Findings of Fact of the plaintiff was denied as appears from the minutes of this Court of October 18, 1948, and the Motion for Order Amending and Correcting Findings of Fact, conclusions of law and Judgment of the defendant was granted as appears from the minutes of this Court of October 18, 1948, and the Court does make the following [32]

AMENDED FINDINGS OF FACT

1. That the plaintiffs at the times mentioned were husband and wife, constituting a community under the laws of the State of Idaho.

2. That they are citizens of the State of Idaho, residing at Bonners Ferry, Boundary County, Idaho.

3. That this action is brought and properly maintained under and by virtue of 28 U. S. C. A. (Supp.) Sec. 931.

4. That on or about the 14th day of May, 1947, plaintiff, Raymond Downum, was driving a Model A. Ford truck owned by the plaintiffs over and along a county road, two and one-half miles west of the town of Bonners Ferry, Idaho, between the hours of 1:00 and 2:00 o'clock in the afternoon, driving in an easterly direction. That at said time and place one Corporal Clyde W. Smith, for the use and benefit and under the direction of the defendant, was driving a one and one-half ton dump truck owned by the defendant in a westerly direction over and along said road approaching the vehicle then and there being driven by the plaintiff. That said Corporal Smith did then and there drive said dump truck in a careless and negligent manner and as a direct and proximate result of such carelessness and negligence, it collided with the truck of plaintiffs with great force and violence causing physical injury to plaintiff, Raymond Downum, and the destruction of plaintiff's truck, as hereinafter more particularly found.

5. That the negligence of said Corporal Smith, driver of said truck, consisted of his driving the same on the wrong side of the roadway directly in the path of the plaintiff's truck, without excuse or cause therefor proximately occasioning the col-

lision between said vehicles and as a proximate result therefrom the plaintiffs sustained damage. [33]

6. That immediately prior to the collision of said vehicles plaintiff Raymond Downum was a strong, healthy, able bodied man, aged thirty-five years. That immediately after said collision and as a result therefrom, said plaintiff became lame, sick, sore and disordered, and shall remain so for the remainder of his natural life, which, according to the American Mortality Table, is thirty-one years.

That said plaintiff sustained a terrific shock to his entire nervous system; the nerves, muscles, tendons, and soft tissue generally was bruised and damaged.

That he sustained numerous comminuted fractures to the bones of his face, a fracture of his nose, a cranial nerve injury essential to sight, occasioning him to suffer permanently from diplopia, disfiguration and permanent scars on his face in the region of his left eye and nose, impairment of the tear duct of his left eye, damaged nerves in his right shoulder occasioning a marked weakness and atrophy in his right hand, diminishing normal functional use thereof, comminuted fractures of the shafts of the right and left femurs, a fracture of the right patella.

That said plaintiff's injuries were such as to cause him to suffer excruciating pain; that he is presently suffering from pain and will in all reasonable certainty continue to suffer from pain and discomfort for the rest of his natural life, and that his injuries are such that in reasonable probability

several additional operations will have to be performed upon his person.

That for a period of five years prior to his injury, the plaintiff, Raymond Downum, earned an income averaging in excess of \$4,000.00 per annum. That at the time of his [34] injury and for some months prior thereto the said plaintiff was gainfully employed and was earning \$10.00 per day. That it would appear from all of the evidence that said plaintiff was capable of earning at least \$3,000.00 per annum.

That the plaintiffs were damaged by reason of the loss of their truck, hospital, medical care, ambulance services and special nursing in the sum of \$3,473.88.

That said plaintiff was totally incapacitated for all purposes for a period of one year following his injuries. That at the time of trial he was incapacitated for all purposes to an extent of from seventy-five to eighty per cent of total disability. That in all reasonable certainty he will be totally incapacitated for all purposes for the remainder of his natural life in a degree of at least sixty per cent.

That plaintiffs have sustained a damage for pain, suffering, personal injuries and permanent physical disability including the special damage hereinabove found, in the sum of \$64,973.88.

7. That the plaintiffs required the services of attorneys and counselors at law for the preparation and maintenance of this action, and the Court finds \$12,000.00 is a reasonable amount to allow said attorneys for their services, which sum shall be paid

out of, but not in addition to the total amount herein found to be due the plaintiffs.

Done in open court this 1st day of November, 1948.

CHASE A. CLARK,
Judge.

From the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

1. That the plaintiffs should have and recover judgment of and from the defendant in the total sum of \$64,973.88. [35]

2. That the sum of \$12,000.00 should be allowed W. J. Nixon and Geo. W. Young as and for attorneys fees, said sum to be paid out of but not in addition to the total amount hereinabove found to be due the plaintiffs.

3. That the plaintiffs should have and recover costs against the defendant.

Done in open Court this 1st day of November, 1948.

CHASE A. CLARK,
Judge.

[Endorsed]: Filed Nov. 1, 1948. [36]

(Item 12 in Praecepte.)

No Amended Judgment was filed. [37]

[Title of District Court and Cause.]

TRANSCRIPT

This matter was tried before the Honorable Chase A. Clark, sitting without a jury, at Couer d'Alene Idaho, on June 10, 1948.

Appearances: W. J. Nixon, Esq., Bonners Ferry, Idaho; George W. Young, Esq., Spokane, Washington, Attorneys for the Plaintiff. John A. Carver, United States District Attorney; E. H. Casterlin, Assistant United States District Attorney; Paul S. Boyd, Assistant United States District Attorney, all of Boise, Idaho, Attorneys for the Defendant.

G. C. Vaughan, Reporter. [38]

June 10, 1948, 10:00 o'clock a. m.

The Court: Are you Gentlemen ready in the case called:

Mr. Young: Plaintiff is ready.

Mr. Casterlin: We are ready.

Mr. Young: The Plaintiffs in this case are husband and wife, Raymond and Edna Downum; citizens of the State of Idaho, residing at Bonners Ferry. The action is brought and maintained by virtue of Title 28 U. S. C. A. Supplement 931.

It is alleged that on the 14th of May, 1947 the Plaintiff Raymond Downum was driving a Model A. Ford Truck owned by the plaintiffs over a county road two and a half miles west of the town of Bonners Ferry, Idaho, between the hours of 1 and 2 o'clock in the afternoon, in an easterly direction and that at the said time and place one Cor-

poral Clyde W. Smith, for the use and benefit of the defendant was driving a one and a half ton dump truck owned by the defendant in a westerly direction over the road approaching the vehicle then and there being driven by the plaintiff. This truck came to a collision with the plaintiff's truck,—a head-on collision; that the plaintiff was driving in a careful and prudent manner on the right side of the road, having in mind the condition of the road and so on; that there was a head-on crash between the two cars. [42] It is our purpose to establish the ownership of the truck in the United States Army who was in charge, and to establish that the driver was acting within the scope of his employment as a member of the armed forces; that as a result of the collision Mr. Downum was grievously injured; that he was hospitalized for approximately eight months; that there were expenses incurred as set forth and there is a general prayer for damages of \$100,000.00 and other or special damages of \$4,473.88, a total of \$104,473.88. Essentially that will be our case.

Mr. Casterlin: To simplify the issues I will call attention to the fact that the answer admits that plaintiffs now are and were husband and wife; that they are citizens of the State of Idaho, residing at Bonners Ferry; that this action is under the Federal Tort Claims Act. The United States further admits that on May 14, 1947 Clyde W. Smith whose present address is unknown, was a corporal in the United States Army stationed at Geiger field; that about the 9th of May 1947 a convoy of Army trucks

were on official business, of which the Chevrolet dump truck, one and a half ton, U S 359178 driven by Corporal Smith was a part, were assigned to Bonners Ferry, Idaho to assist in the control of flood waters of the Kootenai River; that the convoy arrived at Bonners Ferry on May 10, 1947 and were thereafter continuously engaged in hauling dirt as a part of the work of flood control, that on May 14, 1947, at 1 o'clock P. M. Corporal Smith of the United States Army whose present address is [43] unknown to the United States District Attorney, was directed to drive the Chevrolet dump truck to Flood Control District No. 7, and to ascertain there who was operating a particular two and a half ton army truck. The United States further admits that if members of the staff of the Sacred Heart Hospital, Spokane, Washington, competent to testify, were present in Court testifying under oath, that the person or persons called to the stand would testify that the charges in the instrument attached to the pleadings designated as statement of account folio 92-1220 Ray Downum are the regular fixed charges for such services and that the services were actually rendered.

The defendant will further admit if members of the staff of Bonners Ferry Hospital, competent to testify in this matter were present testifying that they would testify that the charges in the statement of account in the matter of Ray Downum are regular fixed charges and are reasonable and that the services were actually rendered. The defendant will further admit that if Frank Morse were present and

testifying he would testify that the charge of \$57.50 for ambulance service from the scene of the wreck to Bonners Ferry Hospital and from Bonners Ferry Hospital to Sacred Heart Hospital Spokane, Washington, was reasonable for such services and [44] that such service was rendered. The defendant will further admit that \$5.00 is a reasonable rental charge as shown on the statement presented, and the defendant will further admit that the charge of \$60.00 at the rate of \$1.00 per hour is a reasonable charge for special nurse in the vicinity of Spokane, Washington where the services were rendered and if the nurse was present testifying that she would so testify, and she would testify that she worked sixty hours on the matter of Ray Downum.

Mr. Young: For the purpose of clarity, you are admitting the amounts set forth in the complaint.

Mr. Casterlin: I am admitting that your witnesses would testify as I have stated.

Mr. Young: Shall I put in the accounts.

Mr. Casterlin: I am admitting that your witnesses would testify as I stated.

The Court: Is there any dispute on the question of negligence?

Mr. Casterlin: We are not admitting negligence.

The Court: Very well, you may call your first witness.

JOSEPH E. CAHILL

Called as a witness by the plaintiffs, after being first duly sworn, testifies as follows:

(Testimony of Joseph E. Cahill.)

Direct Examination

By Mr. Young:

Q. Where do you reside?

A. 1927 West Riverside.

Q. Are you a member of the armed forces?

A. Yes, sir.

Q. Of the United States?

A. Yes, sir.

Q. Do you have a commission?

A. First lieutenant, air force.

Q. Were you such on the 14th of May, 1947?

A. I was.

Q. What was your particular capacity in 1947, on May 14?

A. May 14, I was claims officer, at Geiger Field, Washington.

Q. Did you have in your district, Bonners Ferry, Idaho, for the purpose of adjusting claims?

A. I did.

Q. Did you investigate, on behalf of the United States a claim arising out of a collision between an Army truck referred to here by statement of counsel and a truck driven by Mr. Ray Downum?

A. I did.

Q. Did you go out to the scene where the collision took place?

A. I did.

Q. I believe you stated that you are personally connected with the United States Armed forces?

A. That is correct. I am still a First Lieutenant assigned to the Spokane Air Force base. [46]

(Testimony of Joseph E. Cahill.)

Mr. Young? I am using the witness as an adverse witness?

Mr. Casterlin: That is not according to the rules of civil procedure and I shall object.

Mr. Young: May I ask leading questions?

The Court: You may.

Mr. Casterlin: I object to the general request to ask leading questions on the ground that it is taken care of under the rules of Civil Procedure.

The Court: It may be understood that he is calling him as an adverse witness under the rules of civil procedure and he may proceed.

Q. Now, when did you arrive at the scene of the accident?

A. When did I arrive there?

Q. Let me ask this, when you arrived at the scene you saw Mr. Downum's car, his truck?

A. The truck was removed but there was evidence of the collision point.

Q. Evidence of the collision point indicating that a collision took place on the down side of the road?

Mr. Casterlin: I object to this question, there is no adverse witness under the rules.

The Court: In the first instance Mr. Young, you may ask him the question, as to the condition he found there.

Q. What did you observe when you arrived at the scene of [47] the collision?

A. I arrived at the scene of the collision three and a half or four hours after the accident on the south or the right side of the road inbound toward Bonners Ferry. There were bits of charred

(Testimony of Joseph E. Cahill.)

wood and metal and also piles of dirt and bits of glass and rope and parts of automobile.

Q. With respect to the road did you make any observation as to the width of the road?

A. I did.

Q. How wide was the road at that point?

A. I cannot say exactly but it is wide enough for two conventional vehicles to pass.

Q. Does it extend east and west at that point?

A. It runs east and west at that point.

Q. Is it straight for some distance?

A. Yes, sir, it is.

Q. Was it built on top of the dike?

A. This point I understand was a dike roadway.

Mr. Casterlin: We object to the statement on the ground that it is hearsay, he was not present at the time and it is expressing an opinion from facts which he found there, which is a matter for the Court to determine.

The Court: He can testify as to what he found at this point, it may be connected up later, or it will be stricken. [48]

Q. The point that you are referring to, having in mind the village of Bonners Ferry, how far removed was it, this general point you are referring to?

A. The scene where I found this debris?

Q. Yes, how far is that?

A. It is not more than three miles west of Bonners Ferry?

Mr. Young: You may inquire.

Mr. Casterlin: No questions.

EARL WHITBECK

being called as a witness by the plaintiff, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Young:

Q. Where do you reside?

A. Bonners Ferry.

Q. Were you living there on May 14, 1947?

A. Yes, sir.

Q. Are you acquainted with Ray Downum?

A. Yes, sir.

Q. He is the gentleman sitting here (indicating)?

A. Yes, sir.

Q. Did you have your attention called to the fact that he had been in a collision with an army dump truck?

A. Yes, sir, I did.

Q. Did you learn that fact?

A. I definitely did. [49]

Q. How did you come to know that?

A. I came on the scene of the accident.

Q. What did you observe when you came upon the scene of the accident?

A. I was proceeding to Bonners Ferry from District number seven.

Q. Traveling in the same direction that Downum was traveling?

A. Yes, sir.

Q. Go ahead?

A. I noticed while I was some distance away, I recognized Mr. Downum's truck and I saw he had been in collision with an army truck. I pulled up alongside of the truck,—Mr. Downum's

(Testimony of Earl Whitbeck.)

truck, and Mr. Downum was half sitting and half lying in the truck. He was alone and I tried to pull him from the truck but he was pinned fast. There was no one else at the scene of the accident. About then Mr. Carlson hollered to me and said——

Mr. Casterlin: I object to what someone else said as hearsay?

The Court: Yes, just what you observed, go ahead.

A. I found no one present and I was led to understand that the driver of the truck had borrowed a car and had gone for help.

Q. The driver of the army truck?

A. Yes, sir.

Q. Mr. Downum's truck was situated on the right side, that [50] is, the right hand side of the road in the direction he was going?

A. Where he should be, on the side he should be, at the extreme edge he couldn't have gone closer without going off the edge. The Army truck had apparently hit him——

Mr. Casterlin: We object to what the army truck had apparently done.

Mr. Young: Just what you saw, Mr. Whitbeck.

A. The army truck had hit Mr. Downum's truck almost head on. It was on the extreme right, that is, the left hand side as he was traveling from Bonners Ferry, on the right hand side going toward Bonners Ferry.

Q. The army truck was almost head on with the Downum truck? A. Yes.

(Testimony of Earl Whitbeck.)

Q. Now you suggest some angle there, what was the angle?

A. Very slight, it looked as if he was almost directly on the wrong side, he veered over a very little.

Q. Mr. Downum was as far on his side of the road as he could get without dropping off the side of the road? A. Yes, sir.

Q. Describe that road with respect to how it is constructed along there, where it is, and what kind of a road was it?

A. It was a dirt road.

Q. A dirt road, go ahead.

A. Yes, sir, and it is a dike road there. The road itself had some gravel; at the time of the accident the gravel was all ground in. It was a gravel road but it was not [51] too well maintained.

Q. Do you know the width of the travelled surface?

A. I never measured it but I could make an estimate.

Q. Give your opinion as to the width of it?

A. I should judge approximately 20 feet wide at that point.

Q. Twenty feet, did you say?

A. Yes, about.

Q. On the right hand side of the road,—having in mind the direction in which Mr. Downum was traveling, what if anything was on the right hand side beyond the traveling surface of the road?

A. In the form of a shoulder, you mean?

(Testimony of Earl Whitbeck.)

Q. Yes.

A. A very slight shoulder, it dropped off into the ditch. The road took in all of the dike.

Q. If he had gone farther to the right he would have gone off in the ditch? A. Yes, sir.

Q. What was the depth of that ditch?

A. I would say between ten and fifteen feet.

Q. Then is there a borrow pit along the side or the bottom of the dike?

A. Yes, sir, there is.

Q. Calling your attention to plaintiff's exhibit 1, I will ask you if that exhibit fairly depicts the Downum car after the army truck had been removed? [52] A. Yes, sir.

Q. Do you know whose car that is to the rear?

A. My car.

Q. Does that picture fairly depict the position that the Downum car occupied in reference to the road way? A. Yes, sir.

Q. What kind of truck was Mr. Downum driving?

A. A Model A one-ton truck, or a three-quarter-ton truck, I am not sure, and I am not sure that is my car, but I was parked about in that position.

Q. You may look at it again.

A. That is not my car.

Mr. Young: I offer exhibit 1, in evidence at this time.

The Court: Any objection?

Mr. Casterlin: May I ask a question or two?

The Court: Yes, you may.

(Testimony of Earl Whitbeck.)

By Mr. Casterlin.

Q. Were you present when this picture was taken? A. No, sir.

Q. Then you don't know whether this Downum truck was removed before this picture was taken?

A. This is the Downum truck?

Q. Yes, but I meant, you don't know whether it have been moved after the accident and before the picture was taken? [53]

A. No, I cannot say.

Q. You have been handed exhibit 1 again, now tell us if the Downum truck was in that same position when you first saw it?

A. That is a good picture of the truck as it was when I arrived.

Mr. Casterlin: No objection.

The Court: It may be admitted.

By Mr. Young.

Q. Calling your attention to exhibit marked Plaintiff's exhibit 2, I will ask you if that fairly depicts the Downum truck?

A. Yes, sir.

Q. At the time you first saw it?

A. Yes, of course, the other truck was fastened to it when I saw it first.

Q. You pulled them apart.

A. Yes, sir.

By Mr. Casterlin:

Q. The only difference in the trucks between the time you first saw it and the time the picture was taken was that the Government truck was moved?

A. Yes, sir.

Q. It was moved after you got there before the picture was taken? [54]

(Testimony of Earl Whitbeck.)

A. When we pulled this Government truck it is possible that we pulled the Downum truck from the edge of the grade?

By Mr. Young:

Q. Pulling the army truck from the Downum truck would have a tendency to move the Downum truck toward the center of the road if anything?

A. Yes, sir.

Q. As you pulled the Army truck from the Downum truck, how did you accomplish that?

A. There was a convoy of army trucks, possibly ten of them coming and I flagged them down and used the first one to hook on the army truck and pulled it out.

Q. What happened to the Downum truck when you pulled the army truck off?

A. The Downum truck caught fire.

Q. What did you do to extricate Mr. Downum from the wreckage?

A. I pulled him out.

Q. You pulled him out?

A. Yes.

Q. And what was his condition?

A. I pulled him out; he was helpless; he was pinned fast and that is why I hooked the army truck on the other army truck and that the Downum truck caught fire and I jerked him out. I don't know what gave before I got him out of there.

Q. Mr. Whitbeck, do pictures marked three and four fairly [55] depict the conditions as they were on the highway there?

A. Yes, sir.

Q. (By Mr. Young): I offer these for illustrative purposes as to the extent of the damage.

Mr. Casterlin: Damage to the truck.

(Testimony of Earl Whitbeck.)

Mr. Young: Yes, and the force of the impact.

Mr. Casterlin: May I ask a question.

The Court: Yes.

By Mr. Casterlin:

Q. Do you know where the truck was located when pictures marked exhibits 3 and 4 were taken?

A. I left the scene of the accident as soon as possible. I imagine it was still in the original spot.

Mr. Young: I offer these as illustrative of the damage to the truck and surrounding conditions.

Mr. Casterlin: As so limited I have no objection.

The Court: They may be admitted.

By Mr. Young:

Q. In what condition was Mr. Downum insofar as you were able to observe. What did you observe about his face and head?

A. He was in a terrible condition. If I had not known him well I would not have recognized him. The left hand said of his face was battered out of shape and was a bloody pulp.

Q. What else did you observe? [56]

A. I could observe instantly that both legs were broken. It was obvious.

Q. Did you observe anything else in regard to the injuries?

A. Well, it seemed, perhaps I was afraid of it, but I thought one shoulder was broken; he had difficulty in moving his head, but I don't know as to that.

Q. Did you go to the hospital with him?

A. No, sir, I went to find his wife.

(Testimony of Earl Whitbeck.)

Q. At the scene of the accident was he suffering any pain?

Mr. Casterlin: We object to the question. The witness is not qualified to answer.

Mr. Young: Withdraw that.

Q. When the truck caught fire what happened to Mr. Downum?

A. He caught fire too.

Q. Were you able to extinguish that?

A. Yes, of course. We dragged him from the truck immediately and laid him on the road beside his truck. Mr. Davidson and Mr. Walters appeared on the scene and we extinguished the fire.

Q. Did Mr. Downum complain of pain in your presence?

A. Yes, he was suffering terrible.

Mr. Casterlin: I object to that and move to strike it.

The Court: The first part may stand, the answer yes sir.

Q. What did he say about one of his eyes? [57]

A. He feared that one of his eyes were out. He wouldn't believe me when I told him it was still in his head.

Q. Did you see him at the hospital later?

A. Yes.

Q. When did you see him at the hospital the first time?

A. At the Bonners Ferry hospital, I cannot say now how many days it was after the accident.

Q. What condition was he in with respect to whether he appeared to be suffering from pain?

(Testimony of Earl Whitbeck.)

Mr. Casterlin: Objected to as calling for a conclusion on the part of this witness, and he is not qualified.

The Court: It is easy to know when a person is suffering but I will not permit him to express an opinion on it.

Q. What condition was he in when you saw him in the hospital. What did you observe about him?

A. They had both legs suspended. He was bandaged about the head. I could only see part of his face.

Q. Did you converse with him?

A. Yes, I did, he was able to talk.

Q. How frequently did you visit him at Bonners Ferry Hospital?

A. I had only the opportunity to see him once before he was taken to the Spokane Hospital. [58]

Mr. Young: You may cross examine.

Cross Examination

By Mr. Casterlin:

Q. As I understand it, the place where you found these two cars was on a country highway between,—I will restate that,—the place you found these two cars was on a country highway west of Bonners Ferry?

A. That is correct.

Q. The road runs in an easterly and westerly direction?

A. That is correct?

Q. The road was about twenty feet wide at that point?

A. Yes, sir.

Q. The road followed the top of the dike?

A. Yes, sir.

Q. As Mr. Downum travelled in an easterly di-

(Testimony of Earl Whitbeck.)

rection his portion of the road would be on the south side? A. Yes, sir.

Q. As Corporal Smith was going in a westerly direction his portion of the road would be on the northerly side? A. Yes, sir.

Q. Was that road paved or oiled?

A. No, sir.

Q. Just ordinary dirt surface?

A. It had been gravelled. [59]

Q. What was the condition of the surface of the road on May 14, 1947?

A. I don't understand.

Q. As to whether it was dry or wet?

A. It was dry.

Q. Whether the gravel was loose or well packed?

A. I would say well packed.

Q. How about the wind condition that day?

A. I don't remember.

Q. How about the dust condition?

A. It was rather dusty.

Q. You were not there at the time of the accident. A. No, sir.

Q. Do you know how long after the accident you arrived?

A. I cannot say, no, I cannot say exactly.

Q. On one occasion you used the words "we dragged him from the truck" what do you mean?

A. I dragged him myself, two others tried to move the cushions so I could move him easier.

Q. Who were they?

A. I don't remember except one was the Lutheran Minister at Bonners Ferry at that time, I don't remember his name now.

(Testimony of Earl Whitbeck.)

Q. How long was it after you arrived did this minister arrive? A. I couldn't tell. [60]

Q. He wasn't there when you arrived?

A. I was the first one.

Q. How long after the Lutheran Minister arrived was it before anyone else arrived?

A. I cannot say. This army convoy arrived next.

Q. From which direction did this convoy come?

A. From Bonner's Ferry.

Q. And before you arrived at the truck had you met any other trucks coming in a westerly direction?

A. I cannot remember.

Q. You can't remember that. A. No.

Q. When you first arrived was Mr. Downum,—strike that,—After you arrived what was the first thing said or done?

A. I called his name and he recognized me and immediately asked me to take him out of the truck.

Q. He asked you to take him out of the truck?

A. Yes, he was almost delirious, he kept repeating and begging me to take him out of the truck.

Q. Wasn't that a normal request?

A. Very normal.

Q. From the circumstances, you say the fact that he repeated it, would that indicate that he was delirious?

A. Perhaps delirious is too strong, he was frantic.

Q. He was frantic?

A. Yes, I think so. [61]

Q. He made an intelligent request?

(Testimony of Earl Whitbeck.)

A. That covers a lot of territory, intelligence,—he wouldn't think of anything else.

Q. After you removed him from the truck did you have a conversation?

A. He was not in any condition to have a conversation?

Mr. Casterlin: I move to strike the answer as it is not responsive.

The Court: It may be stricken.

Mr. Casterlin: Read the question.

(Question read by Reporter.)

A. There was a conversation.

Q. You remember that?

A. Yes, I can remember definitely on that.

Q. What was that conversation?

A. He kept calling my name and said "tell me the truth, is my eye out," I said "No." As far as I could say he perhaps would gain the vision of it.

Q. Was there any further conversation?

A. His truck was on fire and we dragged him out, the fire continued to burn and I dragged him behind the truck, back some distance to where my car was situated. He kept making exclamations of pain, he said several things. He repeated things and that's why I made the remark that he was almost delirious, he reiterated about his eye. He also asked that his face be bathed that he couldn't [62] breathe, I held his head in my lap and an army officer brought a canteen of water and we bathed his face. He said "Earl was I on the right side of the road, on my side

(Testimony of Earl Whitbeck.)

of the road" and I said "you were as far as I know" and he repeated that several times.

Q. Were you there when the ambulance came?

A. Yes, sir.

Q. Did you go with the ambulance?

A. I helped put him in the ambulance and followed it into town.

Q. How long after that was it you went to the hospital to see Mr. Downum?

A. Several days, I went for his wife instead of going to the hospital right then.

Mr. Casterlin: I think that's all.

Mr. Young: That's all.

ROY BEAM

called as a witness by the plaintiffs, after being first duly sworn testifies as follows:

Direct Examination

By Mr. Young:

Q. You are a resident of Bonners Ferry?

A. Yes, sir.

Q. You are the sheriff of Boundary County, I think?

A. Yes, sir.

Q. Did you ever have called to your attention this collision [63] that we are having this litigation about?

A. Yes, sir.

Q. When was that?

A. At the time.

Q. What were the circumstances of having this called to your attention?

A. It was during the flood, I had been out at the time and I had an extra man in my office, when I came in he said there was a wreck on number one dike.

(Testimony of Roy Beam.)

Q. Did you go out to the wreck?

A. Yes, sir.

Q. What did you observe?

A. Mr. Downum on the ground with his head in Mr. Whitbeck's lap.

Q. That was when you arrived at the scene?

A. Yes, sir.

Q. And what was Mr. Downum's condition?

A. You could hardly recognize him, someone told me who it was at the time.

Q. Had you known the man before?

A. Yes, sir, for a long time.

Q. Had you not been informed who he was you would not have known him?

A. I would not have known him.

Q. What did you do at the scene of the wreck?

A. The ambulance came and we loaded him in the ambulance and I went ahead with red lights to clear the traffic to get him to the hospital.

Q. Did you observe the position of Mr. Downum's car with respect to the right hand side of the road, having in mind the way he was travelling?

A. Yes, sir.

Q. What was the position of his car?

A. He was on the extreme right hand side of the road.

Q. He was on the extreme right side of the road?

A. He couldn't get any farther.

Q. Did you observe the army truck?

A. They had moved it.

Q. Did you make observation of the point of impact?

(Testimony of Roy Beam.)

A. Yes, I made observation but I was more interested in getting Mr. Downum to the hospital.

Q. Did you see Mr. Downum at the hospital?

A. We put him in the hospital.

Q. You helped put him in there?

A. Yes, sir.

Q. During the time you observed him did he make any complaint as to suffering from pain?

A. Yes, he did, he was groaning but the Doctor had given him a hypo to quiet him some by the time we got him to the hospital.

Q. Did the doctor come with the ambulance?

A. Yes, sir. [65]

Q. What doctor was that?

A. Doctor Durose.

Q. (By Mr. Young): You may inquire.

Cross Examination

By Mr. Casterlin:

Q. What was the road condition that day?

A. It was a gravelled road and it was dusty?

Q. Was there any wind, if you recall?

A. I don't recall that.

Q. You don't recall. A. No.

Q. Were there any other cars on the road when you drove out to the vicinity of this accident?

A. No, I was driving quite fast, I didn't meet any and no one passed me.

Q. When you arrived at the vicinity of the accident what about the dust cloud arising from the back of your car, did you notice that?

A. I couldn't say about that.

(Testimony of Roy Beam.)

Q. Did you drive back of any car?

A. No, I drove ahead of the ambulance to clear the traffic.

Q. Did you notice the tracks that the truck driven by Mr. Downum or Corporal Smith had created?

A. No, sir, by the time I got to the hospital and back the traffic had made it impossible to see much, I noticed some skid marks back of the truck when I rushed up to Mr. Downum. [66]

Q. Back of which truck?

A. The army truck.

Q. Where were those with respect to the center of the road?

A. They were on the wrong side.

Q. On the south side that would be?

A. Yes, sir.

Q. How long were those skid marks?

A. How long, you say?

Q. Yes, how long were the marks, the skid marks?

A. I wouldn't venture to say, but you could see under the truck. There was so much tramping there where they had pulled the truck back, and when they pulled it back it wasn't in the same tracks that it went in.

Mr. Casterlin: That is all.

Mr. Young: Yes, that is all, thank you.

WALLACE DAVIDSON

called as a witness by the plaintiffs, after being first duly sworn, testifies as follows:

(Testimony of Wallace Davidson.)

Direct Examination

By Mr. Young:

Q. You live at Bonners Ferry?

A. Yes, sir.

Q. Are you acquainted with Mr. Downum?

A. Yes, sir.

Q. Did you have your attention called to the fact that he [67] was in a collision with an army truck on dike number seven road?

A. Yes, sir.

Q. Without repeating any hearsay, how did you get that information, Mr. Davidson?

A. Well at the time, I was at my parent's house for dinner. I was eating dinner when this army man came, and wanted to use the phone stating that there had been an accident down the road?

Q. When you got this information you went down, did you? A. Yes, sir.

Q. And you found Mr. Downum?

A. Yes, sir.

Q. Describe briefly the condition you saw there?

A. Well, I parked my car back from the accident and ran down the road, as I was going up to the scene they were pulling the army truck loose from the Downum truck. They had broken them apart and I walked in between them; just about that time someone said the Downum truck had caught fire, they had him loose and then we put dry dirt on to extinguish the fire and they pulled

(Testimony of Wallace Davidson.)

him back, he had caught fire and they extinguished that again, and the truck started to burn fiercely and at that time we pulled him back farther from the truck.

Q. What was the condition of Mr. Downum?

A. His face was not recognizable, his clothes were dirty [68] and torn; his legs were dangling loose.

Q. Did he give any manifestation of suffering from pain?

A. He was repeating different phrases, his concern was to get him away from the fire, he wanted to get away from there.

Q. With respect to his truck where was it with relation to the road, having in mind the direction he was travelling, with relation to the center of the road?

A. Where was his truck in relation to the center of the road?

Q. Yes?

A. On the extreme right hand side of the road in the way he was traveling.

Q. What side of the road was the army truck at the instant of the impact?

A. As I got there they were pulling him loose, he was on the wrong side of the road.

Q. State whether or not he was,—the driver of the army truck, was he in the pathway of the Downum truck?

Mr. Casterlin: Objected to as he was not pres-

(Testimony of Wallace Davidson.)

ent at the time and there is no foundation laid for this evidence.

The Court: Sustained.

Q. What did you observe with respect to the position of the army truck there at the scene?

A. He seemed to be at a slight angle to the other truck on the road, he was angled toward Mr. Downum's truck. [69]

Q. What part of the Downum truck was damaged?

A. The front end of the cab was sort of buckled down on his lap?

Q. What part of the army truck was damaged?

A. I didn't observe that too closely but the front wheel was damaged I know that.

Q. What wheel?

A. The left front wheel of the army truck.

Mr. Young: You may inquire.

Cross Examination

By Mr. Casterlin:

Q. Who was the man that came to the place you were eating?

A. It was an army man, I don't know his name.

Q. He wanted to use the phone?

A. Yes, sir.

Q. You cannot describe him can you?

A. No, but he seemed to be a tall man that is all I could say about him.

Q. Was it Corporal Smith?

A. I don't know.

(Testimony of Wallace Davidson.)

Q. Who was at the scene when you got there?

A. Mr. Whitbeck and this minister, Reverend Hemeck.

Q. Was there any army men there?

A. There were other army trucks and men but I don't know who they were. [70]

Q. How far did you have to go from where you heard this telephone conversation to the scene of the accident?

A. Half a mile.

Q. You saw them jerk him loose?

A. This army personnel they jerked the army truck loose.

Q. Did you see Mr. Downum taken out of the truck?

A. I did.

Q. Was anybody else there at that time except Mr. Whitbeck and this minister?

A. The army personnel was there.

Q. Did you see who took Mr. Downum out of the truck?

A. Mr. Whitbeck had hold of him when he was pulled loose.

Q. Did you observe the tracks of either of the trucks?

A. I did not.

Q. You don't know the course which either truck had followed previous to the collision?

A. No sir, I wasn't observing the trucks, we were interested in getting Mr. Downum free from the truck.

Q. All you know is where the trucks were when you got there, you don't know how they got in that position?

(Testimony of Wallace Davidson.)

A. No, I didn't see them get in that position.

Q. Did you see any other damage to the Government truck except the left front wheel?

A. I couldn't say the extent of the damage, I didn't pay much attention to that, I know they had to pull it loose [71] and that front wheel was damaged, what else I don't know.

Q. Did you notice any skid marks in the road?

A. I don't know.

Mr. Casterlin: I believe that is all.

Mr. Young: That's all Mr. Davidson.

IRBY WALTERS

called as a witness by the plaintiffs, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Young:

Q. You live at Bonners Ferry Mr. Walters?

A. Yes, sir.

Q. Were you living there on the 14th of May 1947?

A. Yes, sir.

Q. Did you have called to your attention a collision participated in by Mr. Downum and a United States Army truck involved here in this case?

A. Yes, sir.

Q. On that date was it?

A. Yes, sir.

Q. You are acquainted with Mr. Downum?

A. Yes, sir.

Q. How did you learn of the collision?

A. I was at the ranch house eating dinner, I completed the meal and this driver of the truck or

(Testimony of Irby Walters.)

a soldier came to the door and wanted to use the telephone. [72]

Q. Then as a result of that you learned there was a collision up the road about half a mile?

A. Yes, sir.

Q. How did you get to the scene of the collision?

A. I rode with Mr. Davidson.

Q. With Mr. Davidson?

A. Yes, sir.

Q. Oh, he is the gentleman who just preceded you on the stand? A. Yes, sir.

Q. What did you observe when you arrived at the scene?

A. They were just pulling the two vehicles apart, Mr. Davidson and I passed between the two vehicles just as they were pulled apart. About that time Mr. Downum's vehicle burst into flames; Mr. Whitbeck was on the driver's side of Mr. Downum's vehicle trying to pull Mr. Downum out and Reverend Hemeck and another gentleman were pulling the cushions out from the Downum vehicle on the other side.

Q. As a result of those efforts he was extricated from the truck?

A. Yes; he was laid by the truck. We tried then to extinguish the flames on Mr. Downum.

Q. Did you notice the position of the Downum car on the road with respect to the way he was travelling? A. Yes, sir. [73]

Q. What position did it occupy, having in mind the way he was traveling?

(Testimony of Irby Walters.)

A. It was faced east on the extreme right-hand side of the road.

Q. What was the condition of the day with respect to the weather, was it clear?

A. The weather was clear.

Q. And was the road dry? A. Dry.

Q. Do you remember what time of the day it was that the collision occurred?

A. I would say it was somewhere near one o'clock or thereafter.

Q. Did you observe the position of the army truck with respect to the center of the road?

A. Yes, sir, I observed the army truck was on Mr. Downum's side of the road facing the Downum vehicle on a slight angle.

Q. Was the angle toward the Downum truck or away from it?

A. It would be toward the Downum truck.

Q. If this was the Downum truck and this was the Army truck (indicating) it would be this way, that is, angled toward the Downum truck?

A. Yes, sir.

Q. What was Mr. Downum's condition when you observed him? [74]

A. His face was badly bruised and bloody, his legs appeared to be broken, one foot was turned completely backward. As he was dragged away from the truck his legs were loose just as though they were badly broken. He was groaning considerable and complaining of the fire, asking to be taken away from the fire.

(Testimony of Irby Walters.)

Q. What was the width of the road at the place of this collision in your opinion?

A. I would estimate the width at the scene of the accident at about twenty-five feet.

Q. What was the surface of the road at that point?

A. It was a dirt road and it had been graveled.

Q. It had been graveled, was that recently?

A. No, it was graveled some years before, it was badly worn and the gravel was fairly dusty.

Q. Was it level?

A. Yes, sir, it was a level road.

Q. With respect to whether it was straight or any curve there at the point of the collision?

A. I would say it was straight.

Q. For some distance either way was it straight away or in a curve?

A. Yes, it was straight.

Q. For what distance? [75]

A. For perhaps a quarter of a mile each way.

Q. A straight piece of road? A. Yes, sir.

Mr. Young: You may inquire.

Cross-Examination

By Mr. Casterlin:

Q. You said that this road had been graveled some years before and was badly worn and dusty?

A. Yes, sir.

Q. Was that the condition on May 14, 1947, when you were there? A. Yes, sir.

Q. Did you observe any cars or trucks that day being driven over this section of road?

A. Yes, many of them.

(Testimony of Irby Walters.)

Q. Just explain the condition of the dust those trucks and cars raised.

A. I distinctly remember the discussion at the dinner table about the dust. There was a slight breeze, just enough to drift the dust slightly to the north.

Q. Could you tell us whether the dust was heavy and thick or light?

A. I would say it was heavy.

Q. Could you see to drive along it if you were following a truck say sixty to a hundred yards back of it? A. I believe so. [76]

Q. It wouldn't blind you and cause you to be unable to see the road?

A. I think a person could have driven in the dust at that distance.

Q. How about fifty yards?

A. I wouldn't say as to that.

Q. You wouldn't say as to that?

A. No, sir.

Q. Do you know who this soldier was that came to the house to telephone? A. No, sir.

Q. You were not there, at the scene, at the time of the collision so you couldn't tell us where the trucks were when they actually made contact?

A. No, sir.

Q. All you know is where you found them when you got down there? A. Yes, sir.

Q. You don't know how they got there?

A. No, sir.

Mr. Casterlin: I believe that's all.

Mr. Young: That is all.

DAYTON DOUGLAS

Called as a witness by the plaintiff, after being first duly sworn, testifies as follows: [77]

Direct Examination

By Mr. Young:

Q. You are a resident of Bonners Ferry?

A. Yes, sir.

Q. Are you acquainted with Mr. Ray Downum?

A. Yes, sir.

Q. Did you become aware of a collision that he participated in with a United States Army dump truck?

A. Yes, sir.

Q. The collision that this litigation is over?

A. Yes, sir.

Q. The date is fixed as May 14, 1947, is that about the time as you remember it?

A. Yes, sir, that is right.

Q. Were you at the scene of the collision?

A. No, sir.

Q. You were the liaison officer working in conjunction with the army working up there?

A. Yes, sir.

Q. Your purpose in coming down was to bring down the written record of the operation of the truck that day?

A. Yes, sir.

Mr. Young: I think in view of the fact that it is admitted that the truck was operated in an official capacity by the Government, I don't think we need this [78] officer.

Mr. Casterlin: That's right. I told Mr. Young and Mr. Nixon what I would admit.

Mr. Young: That is true, but I wanted the

Court to know that we had these records available. That will be all for you, sir.

RAYMOND DOWNUM

Called as a witness for the plaintiff, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Young:

Q. You are Raymond Downum?

A. Yes, sir.

Q. You are one of the plaintiffs in this case?

A. Yes, sir.

Q. How old were you when you got into this collision? A. I think I was thirty-five.

Q. You are a married man? A. Yes, sir.

Q. Of what does your family consist?

A. We have three children.

Q. Where were you raised?

A. Well, I was born in Arkansas and came to Idaho in 1918.

Q. You have made your home in Idaho since that time? A. Not all of that time. [79]

Q. How long have you been in Bonners Ferry?

A. Since 1940.

Q. What is your education?

A. Grade School education.

Q. What has been your business or vocation during your adult life?

A. Farming and manual labor.

Q. Have you any training for anything other than farming and manual labor? A. No, sir.

Q. Directing your attention to the 14th day of

(Testimony of Raymond Downum.)

May, 1947, immediately before this collision where were you and what were you doing?

A. I had been working on District seven dike and I was going home at the time of the accident.

Q. You were going home at that time?

A. Yes, sir.

Q. What did you observe immediately prior to the collision?

A. I had met three vehicles coming from Bonners Ferry; I think there was an army truck then a car then another truck following the car.

Q. Where were you traveling with respect to the right-hand side, having in mind the direction in which you were traveling?

A. I was at the extreme right.

Q. On your right side of the road? [80]

A. Yes, sir.

Q. At what speed were you traveling?

A. I wouldn't know but I would judge eleven, twelve or thirteen miles an hour, somewhere in there.

Q. What kind of equipment were you traveling in? What were you driving?

A. Model A. truck, either three-quarter ton or one ton, I am not sure of the size.

Q. You were driving between ten, eleven, twelve, thirteen or fourteen miles an hour?

A. Yes, sir.

Q. Upon what do you base your conclusion as to that?

A. I was driving as slow as I could in high gear, I know that.

(Testimony of Raymond Downum.)

Q. What was the condition under which you were operating the truck at that time?

A. It was dusty and there was a grey-like fog that you would be driving through.

Q. What was your vision ahead, that is, how far ahead could you see?

A. Well, I was driving along, I don't know how far ahead I could see there. I was driving by looking at the shoulder of the road and I would say I could see thirty or thirty-five feet ahead of the truck.

Q. When did you first observe the army truck?

A. I observed him directly ahead of me and then we crashed. [81]

Q. How far ahead did you observe the army truck?

A. I would judge the length of two automobiles, that would be my estimate.

Q. Assuming the average automobile is about fifteen and a half feet long, what would that estimate be, thirty-one or thirty-two feet?

A. About thirty-two or thirty-three feet I guess.

Q. Then there was that instant and crash?

A. Yes, sir.

Q. You were driving along looking out the side at the side of the road, did you have your eye on the side of the road or were you looking out front?

A. I was slowly driving along, and I was looking out to the front, driving along my side of the road.

Q. Was that road dusty for some distance?

A. Yes, it was dusty.

(Testimony of Raymond Downum.)

Q. There had been a number of vehicles traveling up and down the road hauling dirt and there was some dust in the air.

A. Yes, that's right.

Q. Could you have driven your car any further to the right of the road?

A. I didn't figure that I could. If I had I would have went into the ditch.

Q. Were you keeping a look-out for vehicles coming in the opposite direction? [82]

A. Yes, sir.

Q. After the crash, what happened?

A. Well, there was someone came to the door on the driver's side of the truck and asked if I was hurt. He tried to pull me out and he couldn't do it and then he said he was going for help, the next thing I knew Mr. Whitbeck was there at the door and he tried to get me out and he couldn't pull me out either until after they had pulled the army truck off my truck and then he pulled me out of the truck.

Q. Do you remember those things or are they what was told to you later, we want just what you remember yourself?

A. I remember those things.

Q. Do you remember those things yourself?

A. Yes, sir.

Q. What condition were you in a short time following the impact with respect to suffering from pain?

A. Just following the impact, I thought I was in the river, I could hear water on the hot engine

(Testimony of Raymond Downum.)

and for an instant I thought I was in the river, I couldn't see at all until this man came to the door and talked to me.

Q. When they finally dragged you out of the truck what condition were you in?

A. What do you mean?

Q. With respect to feeling anything?

A. I was in pain, my head hurt me and my legs hurt me, in fact, I hurt all over. [83]

Q. Was this a dull pain or a sharp pain that you felt? A. Sharp pain.

Q. You were taken to the hospital?

A. Yes, sir.

Q. What was done for you in the hospital, do you know?

A. I cannot say what all was done. I know I woke up in bed.

Q. Did you pass out?

A. Yes, they gave me a hpyo and I don't remember anything after that, I don't remember anything after they put me in the ambulance.

Q. Nothing after you were put in the hospital?

A. Until I was in a room in the hospital when I woke up.

Q. After you were in the room of the hospital I don't imagine you know what interval of time that was? A. No, sir.

Q. How long were you in the hospital?

A. I think from the 14th to the 27th of May in Bonners Ferry.

Q. You were moved from the Bonners Ferry Hospital? A. Yes, sir.

(Testimony of Raymond Downum.)

Q. To where? A. Sacred Heart, Spokane.

Q. When did you leave there?

A. The 22nd of December.

Q. 1947 A. Yes, sir. [84]

Q. Do you know how long you were in the hospital in period of months and days?

A. No, sir, not exactly.

Q. During that time you occupied a ward bed?

A. Yes, sir.

Q. During that time what was done for you?

A. Well, I was in traction and they operated on my right leg and put in bolts and screws and they operated on the partition in my nose, they straightened my nose and chiseled a hole for the tears to go.

Q. You had some trouble with the tear ducts?

A. Yes, sir.

The Court: We will recess at this time until 1:30 this afternoon.

June 10, 1948, 1:30 p.m.

Mr. Young: I offer plaintiff's exhibit 5, being an itemized statement of Doctor Durose in the amount of \$135.00.

I am also offering plaintiff's exhibit 6, which is a statement for \$300.00, I understand there will be some evidence on that later—no, I will withdraw exhibit 6 at this time.

I do offer exhibit 8 a statement from the Sacred Heart hospital for \$1898.25.

Mr. Casterlin: No objection to number 8. [85]

Mr. Young: I withdraw number 5 at this time.

Now, I offer exhibit number 10, a check for \$4.38 to the Spokane Surgical Supply Company.

(Testimony of Raymond Downum.)

Mr. Casterlin: No objection.

The Court: Admitted.

Mr. Young: I offer exhibit number 11, a check to Clara Coleman for nursing in the amount of \$60.00.

Mr. Casterlin: No objection.

The Court: Admitted.

The Court: Is there anything further?

Mr. Young: If I may have just a moment.

Now, Your Honor, I offer exhibit 13, no, this is number 12, a check for \$57.50 to Frank Morse with receipt attached, this is in payment for the ambulance account.

Mr. Casterlin: No objection.

The Court: Admitted.

Mr. Young: I now offer exhibit 13, a statement from the Bonners Ferry Hospital for \$213.75.

Mr. Casterlin: No objection.

The Court: Admitted.

Mr. Young: I have one here marked plaintiff's exhibit 16, but I will have these remarked during the recess. I have some confusion here on the exhibits. [86]

Mr. Young: I will recall Mr. Downum now.

Q. When you were in the Bonners Ferry hospital you described what was done for you there?

A. No, I didn't.

Q. Describe what was done at the Bonners Ferry Hospital.

A. Well, I was in traction there and they gave me blood plasma, and then they put me in a cast and sent me to Spokane.

(Testimony of Raymond Downum.)

Q. To the Sacred Heart Hospital?

A. Yes, sir.

Q. And you were placed under the care of Doctor Grieve, an orthopedic surgeon?

A. Yes, sir.

Q. You were in the hospital at Spokane for how long? A. Until the 22nd of December.

Q. Of that same year, 1947? A. Yes, sir.

Q. You were continuously in the hospital between the 14th of May and the 22nd of December, 1947? A. That's right.

Q. Did you experience any discomfort in the hospital? A. Yes, sir.

Q. Starting with the top of your head, tell us what injuries you sustained, what injuries did you sustain to your head?

A. I cannot use the medical terms but I had fractures around the eye. [87]

Q. The right eye?

A. That's right. The cheek was busted open and my nose was busted and the tear drain was damaged, it was ruined.

Q. What about your nose?

A. It was laid over on the right cheek, it was busted.

Q. Now what about your vision?

A. I have double vision when I look down or around to the left or the right.

Q. You see two objects instead of one?

A. Yes, sir.

Q. And have you noticed that since the time of the injury? A. That's right.

(Testimony of Raymond Downum.)

Q. It is that way now? A. Yes, sir.

Q. With regard to your shoulder, what shoulder was injured?

A. My right shoulder, something hit it on the front.

Q. What have you noticed with respect to the right arm if anything?

A. It puts my hand to sleep.

Q. Have you any difficulty with your right hand?

A. Yes, sir.

Q. What does that consist of?

A. No strength in it, sidewise.

Q. Can you make a fist?

A. Yes, I can do that.

Q. But there is a weakness this way (indicating). [88] A. Yes, sir, that is right.

Q. Between your index finger and thumb there is a depression. Was that there before the injury?

A. No, sir, it wasn't.

Q. Does that hand bother you when you attempt to use it? A. Yes, sir.

Q. In what way?

A. Any pressure sidewise to it, like using a wrench or reaching anywhere with my fingers.

Q. You can carry a bucket, can you, and that sort of thing? A. Yes, that's right.

Q. But in using your index finger and thumb do you have any strength in that sort of action?

A. Very little, practically none at all.

Q. Has that condition improved or is it about the same?

(Testimony of Raymond Downum.)

A. Well, the last six months I cannot see any improvement at all in that.

Q. Now Mr. Downum, with respect to the middle of your body was it injured?

A. No, sir, it was not.

Q. What injury did you have to your legs?

A. Both shattered, both femurs.

Q. Both femurs were broken?

A. Yes, sir, they were shattered.

Q. And the knee-cap what about that? [89]

A. It was busted, too.

Q. You had a broken right knee cap?

A. Yes, sir.

Q. With respect to the legs are they the same length now?

A. No, the left leg is three-quarters of an inch longer than the right one.

Q. Is that a different situation than obtained before the accident or injury?

A. This came about from the accident.

Q. Before this injury what was your general health, what kind of shape were you in?

A. Perfect.

Q. In good condition? A. That's right.

Q. Working every day, were you?

A. Yes, sir.

Q. Since the injury have you been able to work?

A. No, sir.

Q. You haven't worked at all since the day of the injury? A. Not a day.

Q. Have you tried to work?

(Testimony of Raymond Downum.)

A. Well, yes, I try to do what I can around but I tried to dig worms to go fishing the other day and that is very difficult for me to do that.

Q. I think you told me about a tire—something about a tire, what was that?

A. We had a flat and I tried to remove the tire from the [90] rim and I have to have help from my son and he got it off for me.

Q. Is that on account of your physical condition or any physical disability on account of this injury?

A. Yes, my stiff knee.

Q. When you first got out of the hospital were you able to walk?

A. Yes, I was on crutches just barely could get around.

Q. How long were you on crutches?

A. I think I have been using a cane now about one month, I don't know the exact date I quit the crutches, but it is about a month.

Q. Up to that time you were using crutches.

A. That's right.

Q. When you walk over uneven ground what trouble do you experience, if any?

A. I have to be very careful or I will fall down.

Q. Stepping over logs or going in rough country what is the situation?

A. I have to raise my leg out sidewise to get over a log or anything like that.

Q. Can you follow any manual labor at the present time.

Mr. Casterlin: Objection, that calls for an opin-

(Testimony of Raymond Downum.)

ion on the part of the witness and it would be a self-serving declaration.

The Court: He might testify what he can do.

Q. Can you do work that you customarily have to do on the [91] farm? A. No, sir.

Q. What about walking up and down hill?

A. If it is a smooth surface I can, but any unevenness it is difficult, if there is any trash, rocks or sticks it is difficult for me to get around.

Q. Do you or rather did you walk back to the hotel today?

A. No, sir, I rode in a taxi cab up here.

Q. You walked down to the hotel?

A. Yes, sir, I walked down.

Q. What effect does it have on you?

A. The leaders back of my ankle hurt, in here, and my foot pains a very sharp pain.

Q. When you are on your feet for two or three hours what do you experience?

A. At the time I am on them it doesn't bother so much, when I sit down then they stiffen and then I cannot straighten them up.

Q. Did you notice the manner in which the femurs were set in the hospital—did you notice any wound in the side of the leg? A. Yes, sir.

Q. What leg was that?

A. The bone came out in the side of the left and also a cast scar on that, and on the right leg a cast scar on that, too. [92]

Q. Did you notice, or do you know the manner in which the bones were healed, or in which they were held together to heal?

(Testimony of Raymond Downum.)

A. The right leg has two bolts and ten screws.

Q. Are those bolts and screws still in the bones?

A. Yes, they are.

Q. Do you know whether they—strike that—do you get any discomfort from the bolts that are holding the femur together in the right leg?

A. Yes, sir, if I sit like this I can feel the screws digging in. Too much weight like this; they are sharp pains I get.

Q. Your nose is out of midline. Was it that way before this accident? A. No, sir.

Q. That comes from this accident also?

A. Yes, sir.

Q. What have been your earnings in the past years, I think you prepared some answers to interrogatories? A. That's right.

Q. Where did you get the information from which to answer those interrogatories?

A. Income tax reports.

Q. I have given you copies of the answers you made? A. Yes, sir.

Q. Now, can you state what your income was for 1942? [93] A. Yes, sir, \$3039.22.

Q. And what was your income for 1943?

A. \$3696.73.

Q. In 1944? A. \$4104.12.

Q. And in 1945, what was it? A. \$4469.51.

Q. In 1946? A. \$5007.50.

Q. Then in 1947 you had a ranch that you sold?

A. That's right.

Q. You realized capital gain on this ranch and livestock in 1947? A. That's right.

(Testimony of Raymond Downum.)

Q. The capital gain was what?

A. \$6382.19.

Q. You didn't make an income tax return for 1947 outside of the capital gain on the ranch?

A. That's right.

Q. In 1947 what were you doing?

A. Working for wages.

Q. What wages were you earning up to the time of this wreck?

A. I had been working for Boyd-Conley at Bonners Ferry and also on the dike.

Q. What was the daily wage then? [94]

A. \$1.25 an hour, the best I remember.

Q. In addition to those wages you report working on a farm. What would you make in addition to that, that would be from the sale of poultry and eggs?

A. From the use——

Q. I will withdraw that question. That was stuff you used.

A. Yes, sir, we used that.

Mr. Young: I wonder if I may excuse this witness in order to call Doctor Durose at this time.

Mr. Casterlin: I have no objection, that may be done as far as I am concerned.

The Court: Very well.

DR. FREDRICK W. DUROSE

Called as a witness by the plaintiffs, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Young:

Q. State your name and residence?

A. I am Fredrick W. Durose, M.D. I live at Bonners Ferry, Idaho.

(Testimony of Dr. Fredrick W. Durose.)

Q. You are licensed under the laws of the State of Idaho as a physician and surgeon?

A. Yes, sir.

Mr. Casterlin: We will admit the qualifications of the Doctor.

Mr. Young: Thank you. [95]

Q. Doctor, directing your attention to the Plaintiff in this case Raymond Downum, when and where did you first see him following this collision?

A. May 14, 1947, between two and three p.m. at the site of the accident about two miles west of Bonners Ferry on the dike road.

Q. What condition was he in?

A. He was semi-conscious, laid on the road with his head supported by an individual who came to help and who had helped to, or had removed him from the burning truck.

Q. You did the immediate things that were indicated there.

A. Yes, sir, applied bandages to the bleeding parts of his hands, face and legs. He had minor burns on the chest; his legs were obviously fractured, being twisted into unnatural shapes.

Q. The ambulance was sent for and he was taken to the hospital? A. Yes, sir.

Q. You were with him at the time?

A. Yes, sir.

Q. And then I presume you made a more detailed examination at the hospital?

A. Yes, sir; the first thing was to treat him for shock; he was in a state of shock at that time.

Q. What ultimately was revealed?

(Testimony of Dr. Fredrick W. Durose.)

A. We found a comminuted, compound fracture of the femurs, [96] both of them; he had a fracture of the skull involving the nose and multiple abrasions, lacerations and contusions.

Q. What about his knee-cap?

A. Abrasion of the knee-cap.

Q. A fracture indicated there?

A. I didn't determine that.

Q. What about the wrist and shoulder?

A. It was bruised and abraded.

Q. Fractured? A. No evidence of fracture.

Q. You gave treatment for shock, tending to keep the patient alive? A. Yes, sir.

Q. You didn't reduce those fractures?

A. Not at that time.

Q. You didn't want to add to the shock?

A. That's right.

Q. What did you do by way of controlling the fractures?

A. We applied extension to the lower extremities, Buck's extension.

Q. Describe this Buck's extension.

A. We place strips of adhesive tape along the extremities from as high up as we could and applying the extension of weights and pulleys to draw the bones to their original position.

Q. How long was Mr. Downum in the hospital?

A. May 14, and was transferred to Sacred Heart at Spokane on May 26, 1947.

Q. You referred him to Doctor Greave?

A. That's right.

Q. Taking your knowledge of this patient, the

(Testimony of Dr. Fredrick W. Durose.)

injuries and the general type and extent of them into consideration, state whether or not in your opinion they are permanent in nature?

A. It is my opinion he will have some permanent effects of the injuries in the lower extremities and also in the nose and face.

Q. What, with reasonable certainty—in other words, with reasonable certainty he will continue to suffer from these injuries the rest of his life?

A. That is my opinion.

Q. At my request did you bring the hospital record from Bonners Ferry? A. Yes, sir.

Q. Calling your attention to exhibit 14 marked for identification, I will ask you if that is the original of the hospital record?

A. That is the original record.

Q. I now hand you a document in typewriting and ask you if that is an exact copy of the original hospital record? [98] A. That's right.

Mr. Young: I would like to substitute this copy for what was marked as plaintiff's exhibit number 14.

Mr. Casterlin: We have no objection to substituting the copy.

The Court: The copy may be used.

Mr. Young: I offer it in evidence.

Mr. Casterlin: May I ask a question?

The Court: You may.

By Mr. Casterlin:

Q. The hospital bill states he was discharged on the 27th and in your testimony you said the 26th, can you tell us what occasioned that discrepancy?

(Testimony of Dr. Fredrick W. Durose.)

A. Yes, I ordered his discharge on the 26th and he was actually discharged on the following day because of the transportation problem.

Q. I hand you exhibit 13 and proposed exhibit 14. Now, I notice on 13 there is an item of private room thirteen days at \$6.50 total \$84.50, is that amount included in the proposed exhibit 14.

A. It is my opinion there were fourteen days, no, thirteen days are correct, that is included.

Q. Now, calling your attention to exhibit 13, the second item of \$63.00, does that include the item in exhibit 14? A. That is right. [99]

Q. Calling your attention to the last item X-ray eight large 14 x 17 and three medium 10 x 12 \$54.25, is that on exhibit 14? A. That's right.

Mr. Casterlin: No objection to exhibit 13.

The Court: I thought 13 was admitted, if not it may be admitted at this time. Doctor, is there an additional amount of \$213.75 in that exhibit?

A. No, sir.

The Court: Are we talking about the exhibit just offered now, isn't that number 14?

Mr. Young: Perhaps we are confused again on the numbers, I think the Court is right.

The Court: At any rate it may be admitted.
By Mr. Young:

Q. This record, Doctor, is to show the history of the case in the hospital. It includes the treatment? A. That is the purpose of this.

Q. And you rendered a bill for services for \$135.00. A. Yes, sir, that's right.

(Testimony of Dr. Fredrick W. Durose.)

Q. Do you consider that reasonable, taking into consideration the nature of the service?

A. Yes, sir.

Mr. Young: I offer exhibit 5 in evidence.

Mr. Casterlin: No objection.

The Court: Admitted. [100]

Mr. Young: You may examine.

Cross-Examination

By Mr. Casterlin:

Q. The Court: Before you start Mr. Casterlin, Doctor, not being a Doctor, of course, I don't know, but I understand that Doctors in treating patients of this kind are able to give their opinion on the percentage of permanent disability a person suffers. I wonder if you can answer such a question.

A. I prefer the question to be asked and answered by the Doctor who took care of him after I did.

The Court: Go ahead, Mr. Casterlin.

By Mr. Casterlin:

Q. You were first called to attend Mr. Downum on May 14. A. That's right.

Q. He was in your hospital at Bonners Ferry until May 27, is that correct? A. Yes, sir.

Q. Subsequent to May 27 have you been called to examine Mr. Downum? A. No, I have not.

Q. So that your testimony here in reference to the permanence of any injury is based entirely upon your examination prior to May 27?

A. That's right.

Q. You have had no opportunity to notice

(Testimony of Dr. Fredrick W. Durose.)

whether he has made [101] any progress between May 27 and the present time?

A. Only by seeing him on the street, apparently he has made considerable progress. When he was taken from my care he was totally disabled.

Q. But you wouldn't say permanently?

A. I couldn't say that.

Q. Your observation is that he has improved?

A. My observation has been casual.

Q. Your conclusion is that he has materially improved? A. He has materially improved.

Q. Have you any opinion as to whether or not this improvement will continue?

A. It is my opinion that he has probably made almost as much improvement as he is going to.

Q. You cannot determine that without an examination?

A. Not without seeing x-ray taken after my treatment?

Q. Taking into consideration the condition in which you found Mr. Downum on May 14, what percentage of recovery would you say that he has made, based on casual observation?

A. Literally he has recovered 99 and a fraction per cent because when I saw him I would not have given much for his chance of survival.

Q. Now, the treatment that you extended to Mr. Downum on May 14, did you do that to keep the patient alive?

A. That was the first concern. [102]

Q. On first observation did you consider that there was a likelihood of death?

(Testimony of Dr. Fredrick W. Durose.)

A. It was evident that he was seriously injured, suffering from shock which would have been the cause of death if he had expired at that time.

Q. So there was, in your opinion, a probability of his expiring at that time?

A. He would have expired had he not been given blood plasma at that time, that is my opinion.

Q. Your examination ran over his entire body from head to foot? A. Yes, sir.

Q. You state that most severe condition was in connection with the fraction of the femur.

A. That's right.

Q. Did you find in examining the right shoulder whether there was a puncture of the skin?

A. Several abrasions of the skin.

Q. Were those deep or superficial?

A. I cannot remember exactly about that, but they were marked enough to require dressing so that must have been through the skin, hemostatics or stopping the flow of blood.

Q. Did you find any evidence of deep skin puncture in the region of the shoulder?

A. Several abrasions and lacerations, the depth of them I don't recall.

Q. There has been some testimony here that Mr. Downum's [103] right leg is three-quarters of an inch shorter than the left leg; in your opinion as a Doctor, what effect would that have?

A. That amount would be compensated by the tilting of the pelvis.

Q. Would the tilting of the pelvis cause any difficulty.

(Testimony of Dr. Fredrick W. Durose.)

A. Could cause difficulty in the spine.

Q. Is there a treatment by which that can be adjusted?

A. The possible affection of the spine, you mean?

Q. Yes.

A. To build up for the loss of length on that side?

Q. That is the recognized treatment?

A. Yes, sir.

Q. Isn't it a fact that we find many people suffering with a back condition because of unequal length of legs?

A. Doctor Greave can answer that much more authoritatively than I, but that is my opinion.

Q. This can be corrected?

A. Compensated for rather than corrected.

Mr. Casterlin: That is all.

Redirect Examination

By Mr. Young:

Q. You made a statement Doctor, that Mr. Downum had made a 99 and a fraction per cent amount of recovery or improvement over what he was when you first saw him after this collision? [104]

A. I was speaking in terms of life and death; I would retract that 99 per cent, I meant to infer that he was so nearly expired that it looked hopeless.

Q. The fact that he is now able to walk with a cane and is alive is a material gain so far as he is concerned?

A. That's right.

(Testimony of Dr. Fredrick W. Durose.)

Q. Taking the total disability and what he now has is very material? A. That's right.

Mr. Young: That is all Doctor.

Recross-Examination

By Mr. Casterlin:

Q. You testified that the most severe condition you found was the fracture of the femur, have you examined him since with respect to this injury?

A. Not since he left my care.

Q. From your observation would you say he is getting along all right? A. What was that?

Q. From your observation would you say he is getting along all right, so far as these fractures are concerned?

A. As well as we can expect but not all right.

Q. So far as that condition is concerned, has he improved as much as he ever will?

A. I will refer you to the orthopedic men who are better [105] qualified to answer that.

Q. You don't care to express an opinion on his bone condition and nerve condition and eye condition?

A. I could only express a guess or opinion, I would prefer that the specialists answer those questions.

Mr. Casterlin: That is all.

Mr. Young: That is all Doctor, I wonder if the Doctor may be excused.

Mr. Casterlin: I have no objection.

The Court: You may be excused, Doctor.

WILLIAM E. GREAVE

Called as a witness by the plaintiffs, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Young:

Q. Your name is William E. Greave?

A. Yes, sir.

Q. You are a physician and surgeon?

A. Yes, sir.

Q. You live in Spokane? A. Yes, sir.

Q. You are licensed as such physician and surgeon in the state and under the laws of Washington? A. Yes, sir.

Q. And you practice in the State of Washington? A. Yes, sir. [106]

Q. You specialize in any branch?

A. I limit my work to fractures and orthopedic surgery.

Q. Was Raymond Downum a patient of yours?

A. Yes, sir.

Q. Was he referred to you by Doctor Durose?

A. He was.

Q. Give us the history that you took, then, next in order your diagnosis.

A. He was referred to me in the Sacred Heart Hospital on May 27, 1947, he came in a double head spika cast.

Q. Describe that, will you Doctor?

A. It extends from the toes to above the waist, including both legs. It made him more comfortable so he could be moved from Bonners Ferry to Spokane. I had an x-ray taken to determine the position of the fragments, in the cast. The x-ray re-

(Testimony of William E. Greave.)

vealed comminuted fractures of both femurs and the bones were not in very good position; there was a comminuted fracture of the right patella.

Q. You use the word "comminuted" Dictor, explain a comminuted fracture?

A. More than two pieces of the bone.

Q. Would it be fair to state that the bone was shattered? A. Yes, sir.

Q. Was there evidence that those fractures were compound? A. I knew one was compound.

Q. By that you mean the break was through the skin also? [107] A. Yes, sir.

Q. Was part of the bone sticking out through the skin?

A. This history on the chart was taken by an interne while he had the cast on, of course.

Mr. Casterlin: Doctor, this history you are about to give us, was it taken by you or an interne?

A. The history on the chart was taken by an interne.

Mr. Casterlin: You didn't do that, you didn't take it personally? A. No, sir.

By Mr. Young:

Q. What do you know personally, Doctor about the condition of this man?

A. When I first saw him he was quite anemic, looked as though he had been through quite a trying time. We had an x-ray of the femur and also of the neck and face. The red blood count was low, hemoglobin was low.

Q. What do you mean by hemoglobin?

A. That is the red color in the blood.

(Testimony of William E. Greave.)

Q. You didn't immediately start orthopedic work on him?

A. After I saw the x-ray I removed the cast; put wires through the femur and applied traction; the traction was varied from time to time, trying to get the bone in good position, in as good position as possible. We found or rather it was determined that the right femur was not going into good position and I thought that was because there [108] was muscle between the ends of the bone, therefore I did an open operation on the right thigh and put in bolts with screws to hold it together?

Q. What type of bolts?

A. Rustless steel bolts.

Q. How long are those bolts?

A. About five inches.

Q. One on each side?

A. One on the side and one on front.

Q. These screws put into the bone and form a part of the bone now, Doctor?

A. Yes.

Q. Through the marrow of the bone?

A. Through the marrow; both sides of the bone.

Q. And how long are those screws?

A. Long enough to reach through the bone.

Q. How many screws did you put in?

A. Eight I think altogether, they will show in the x-ray.

Q. Doctor, will you get the x-ray in order in which they were taken?

A. I didn't bring all the x-ray with me, there was too big a lot of them. Now, here is a left lateral view——

(Testimony of William E. Greave.)

Mr. Young: —Let's have that marked as plaintiff's exhibit 15.

Q. Now go ahead, Doctor?

A. Here is an anterior-posterior view of the left femur. [109]

Mr. Young: We will mark that 16.

A. This is a lateral view of the right femur.

Mr. Young: We will have that marked 17.

A. Here is an anterior-posterior of the right femur, this is taken on May 27.

Mr. Young: And that will be marked 18.

A. This is on June 23, the right femur.

Mr. Young: That will be marked as 19.

A. June 23, another of the right femur.

Mr. Young: That will be marked 20.

A. Here is the right femur, lateral, this was in December.

Mr. Young: That will be exhibit 21.

A. This is an anterior-posterior in December of the right femur.

Mr. Young: That will be marked 22.

A. Here is the left femur in December, although you cannot read the dates on these so very well.

Mr. Young: That will be marked 23.

A. Here is a lateral view of the face.

Mr. Young: That will be marked 24.

Q. That all of them Doctor?

A. Yes, that is all the x-ray.

Q. Now then, Doctor, I am handing you exhibit 15 marked for identification, state whether or not that is an x-ray film?

(Testimony of William E. Greave.)

A. This is a lateral view of the left femur showing a fracture [110] here (indicating) with loose fragments, this (indicating) held the wire——

Q. ——Now, Doctor describe that more fully please, where is the wire?

A. There is a wire to hang the weight on, this is a splint his leg is resting on (indicating).

Mr. Young: I offer exhibit 15 in evidence.

Mr. Casterlin: May I inquire of the Doctor?

The Court: Yes, you may.

By Mr. Casterlin

Q. Doctor, calling your attention to exhibit 15, I notice over toward the left side there is a break in the femur, is that the only break in that femur?

A. This is loose bone here (indicating) and there are some other loose pieces of bone in here (indicating).

Q. But at that point is the only place the left femur is broken? A. Yes, sir.

Q. This heavy line is no part of the work left in his body at the present time (indicating).

A. No, sir.

Q. When was that picture taken?

A. May 27.

Mr. Casterlin: No objection.

The Court: It may be admitted. [111]

By Mr. Young:

Q. The femur is the main bone of the leg comprising the thigh? A. Yes.

Q. Calling your attention to exhibit 16, tell us what that shows, Doctor?

(Testimony of William E. Greave.)

A. An anterior-posterior view, front to back of the same bones. Here is the hip joint (indicating) and here is where this piece came out, there are small pieces of bone scattered all through the muscle in that neighborhood.

Q. When was that taken?

A. May 27, 1947.

Mr. Casterlin: Did you take that Doctor.

A. The x-ray technician under my order.

Mr. Casterlin: Under your supervision.

A. Yes, sir.

Mr. Casterlin: You know definitely they are pictures of Mr. Downum? A. Yes, sir.

Mr. Casterlin: No objection to its admission.

The Court: It may be admitted, if it was offered.

Mr. Young: Yes, I make the offer now.

The Court: It is admitted.

Q. Calling your attention to exhibit 17, Doctor, I will ask you what it is? [112]

A. That is a lateral view of the right femur, in this we have traction on the tibia, this fracture was close to the knee; there is also a fracture of the patella that shows in here, two large loose fragments here (indicating).

Q. Take a pen Doctor, and make an X where the fragments are.

(Whereupon witness indicated as directed.)

The Court: Yes, they are plain on the exhibit.

Mr. Young: We offer exhibit 17.

Mr. Casterlin: When was number 17 taken?

A. May 27th, 1947.

(Testimony of William E. Greave.)

Mr. Casterlin: No objection.

The Court: It may be admitted.

Q. Go ahead with the next exhibit Doctor?

A. This is exhibit 18, it is of the right femur taken on May 27, 1947 and shows considerable space between the fragments, shows that they didn't get closer; I took lots of different pictures in attempting to get these bones, or rather this bone, these pieces together by force?

Q. This is equipment (indicating).

A. Yes, this is a splint that was under the leg, that is used to vary the angle at the knee.

Mr. Young: I offer exhibit 18.

Mr. Casterlin: No objection.

The Court: Admitted. [113]

Q. Now, Doctor, this exhibit 19, what is that?

A. That is an anterior-posterior view of the right femur, it was taken June 25, or June 23, yes, that is what it is, 1947; this was after one month, this space is here (indicating) and we have new bone formed between this fracture here, this is six weeks after the injury. Because we couldn't close this space I figured there was muscle in there and this would never become strong enough without an open operation; shortly after this I did an open operation?

Mr. Young: I offer exhibit 19.

Mr. Casterlin: Was this taken the 23rd or the 25th? A. The 23rd.

Mr. Casterlin: No objection.

The Court: Admitted.

(Testimony of William E. Greave.)

Q. I call your attention to exhibit 20, what is that?

A. This is a lateral view of the right femur taken on June 23, 1947.

Q. What condition of pathology is shown in that exhibit?

A. Loose pieces and some posterior angulation.

Q. Does it show any union?

A. It doesn't show any union but it doesn't show any dead space, it shows that the femur shortened up some.

Mr. Young: We offer this in evidence.

Mr. Casterlin: No objection. [114]

The Court: Admitted.

Q. Calling your attention to exhibit 21, what is that Doctor?

A. That is a lateral view of the right femur taken in December 1947, it shows both the bolts, that is, it shows two bolts in the femur and there are nine screws I see by this. There is still some posterior angulation. It shows the patella healed but still considerable irregularity of the patella.

Q. Are these screws left in permanently?

A. These screws are a little longer than they should be.

Q. Doctor are these extending into the soft tissue?

A. Yes, sir.

Q. Are they left in permanently?

A. If they cause no pain we leave them in.

Q. You say these are in the soft tissues?

A. Yes, sir.

(Testimony of William E. Greave.)

Q. The patient complains of pain when he sits for some length of time, localizing it to the place the bolts are, now, would they cause the pain?

A. That is possible.

Q. Is it probable, what is the probability of them causing the pain?

A. If he had pressure right over the screws it is probable that it would cause him pain.

Mr. Young: I offer this in evidence. [115]

Mr. Casterlin: No objection.

The Court: It may be admitted.

Q. (By Mr. Casterlin): What date was that taken, Doctor? A. December 8.

By Mr. Young:

Q. Calling your attention to exhibit 22, interpret that for us, please?

A. This is an anterior-posterior view of the right femur taken December 1948, it shows the bolts and screws in place and it shows the loose fragments of the femur still in there.

Q. What is the probability of there being movement of the loose fragments of the femur within the soft tissue?

A. Not much chance of that.

Q. What is the probability of that causing discomfort?

A. It is irregular and if he gets pressure over that irregularity it will cause him pain, yes, that is probable.

Mr. Casterlin: When was that taken Doctor? .!

A. December 8, 1947.

(Testimony of William E. Greave.)

Mr. Casterlin: You didn't mean to say 1948.

A. No.

Mr. Young: I offer it in evidence.

Mr. Casterlin: No objection.

The Court: It may be admitted. [116]

Q. Doctor, calling your attention to exhibit 23 marked for identification, do the same with that as you have done with the others Doctor, explain that?

A. That is a lateral view of the left femur, it looks like it has grown solidly together; there is an irregularity where one of the fragments has healed along with the rest of the callus.

Q. Is that considered to be a good union?

A. On this view it is good but on the other it doesn't look so good, this shows some decalcification in the knee joint.

Q. What is the significance of that?

A. Due to the non-use we frequently find some arthritis developing following a condition of that kind.

Mr. Young: I offer exhibit 23 in evidence.

Mr. Casterlin: No objection.

The Court: It may be admitted.

Q. Calling your attention to Plaintiff's exhibit 23 please tell us what that is and the date it was taken?

A. Anterior-posterior view of the left femur, it was taken December 8, 1947. This is the last film while he was in the hospital and shows a union at the site of the fracture, the loose fragments all tied in but there is some irregularity at the site of that fracture.

(Testimony of William E. Greave.)

Q. Which is the knee joint?

A. This one (indicating). [117]

Q. This bone goes down,—it is attached to the hip?

A. To the hip, yes.

Q. It seems to be offset,—this seems to be offset here, is that considered a good union?

A. It is a pretty good alignment, there is a little edge there and there is some shortening, some overriding of the fragments; it is considered to be good practice to allow the femur to shorten up rather than build it up.

The Court: What effect does this have, this space here (indicating).

A. That should not cause arthritis, too much angulation will result in arthritis; this is not bad, I don't think it will cause much arthritis in the knees, but along with other defects it is quite probable he will have some arthritis in his knees.

Q. What about the balance of his body, the upper part of his body where you have the upper shaft of the femur thrown off like it is there will it effect him when he walks?

A. No,—of course, he said he has a three-fourths inch shortening, that may cause arthritis in his lower back in time. He has some scarring in the muscle which will result in permanent weakness in the muscle of his thigh, and he doesn't have full flexion of the knee.

Mr. Young: I offer in evidence exhibit 24.

Mr. Casterlin: No objection.

The Court: It may be admitted. [118]

(Testimony of William E. Greave.)

Q. Calling your attention to exhibit 25, what does it show?

A. That is a lateral view of the face, it shows the face pushed in a little bit,—not a very good picture. I would rather have Doctor Poll testify on this.

Q. It is an x-ray of his face. A. Yes, sir.

Mr. Young: I offer it in evidence.

Mr. Casterlin: No objection.

The Court: It may be admitted.

Q. Now, Doctor, the date on that?

A. August 25, 1947.

Q. And what is this?

A. That is a picture of his head, this is the nose in here, and that is about all I can tell about it, Doctor Poll better testify on that.

Mr. Young: I will offer it at this time as exhibit 26.

Mr. Casterlin: What date was it taken?

A. That was August 25.

Mr. Casterlin: That is a lateral or frontal?

A. The last is anterior-posterior number 26, and 25 is a lateral.

Mr. Casterlin: No objection.

The Court: It may be admitted, we will recess at this time for ten minutes. [119]

2:45 p. m. June 10, 1948

Q. I think we finished with the x-rays.

A. Yes, I think so.

Q. When was the last time you saw this patient for the purpose of examination?

(Testimony of William E. Greave.)

A. May 27, 1948.

Q. What condition did you find him in at that time?

A. He was still quite weak in both the legs and the right arm, there was atrophy present, the ulna nerve paralysis in the right and his grip in the thumb in the right hand is not good.

Q. What is the occasion of the atrophy in the right thumb?

A. Injury to the brachial plexus where the nerves come from the spine.

Q. In the right shoulder.

A. Yes, sir.

Q. Injury to the brachial plexus of the right shoulder?

A. Possibly some in the neck. I think he had an injury to the bone in the neck but the x-ray didn't reveal any dislocation of the cervical vertebra but he did have pain in the neck.

Q. Has he marked atrophy in the right hand between the thumb and the index finger?

A. Yes, sir.

Q. Is there a weakening of that hand by virtue of lack of nerve supply? [120]

A. Yes, sir.

Q. State whether or not that is permanent, in your opinion? A. Yes, it is.

Q. With reasonable certainty will that remain with him the rest of his life?

A. It has not improved any in the year, so I think it will be permanent.

Q. What is the prospect of nerve tissue healing?

(Testimony of William E. Greave.)

A. Some nerves heal pretty well if they are put together properly and held together.

A. What about an injury to the brachial plexus?

A. It is difficult to repair that, therefore they do not regenerate.

Q. You are prepared to state that this man has a permanent nerve injury to the nerve supplying the hand, particularly the thumb and the index finger?

A. Not a complete injury but there are some muscles completely paralyzed.

Q. Is the ulna nerve involved?

A. It is,—it is the Ulna.

Q. What effect does that have on the deltoid muscle?

A. He does have an involvement of some of the muscle fibers in the deltoid, due to the rupture on the shoulder.

Q. That is the muscle that abducts the arm?

A. Yes, sir.

Q. The wrist and the arm? [121]

A. Yes, but it doesn't interfere with his function of the shoulder very much.

Q. With respect to his face what condition did you find his face to be in, what condition did you discover his face in upon the original examination?

A. His left cheek was pushed in and the lower lid of his left eye was pulled down, along with the injury to the cheek his nose was pushed over on the right side of his face.

Q. When you examined him you referred him to Doctor Poll?

A. Yes, sir.

(Testimony of William E. Greave.)

Q. He specialized in eye and nose surgery?

A. Yes.

Q. He took care of this surgery?

A. Yes, sir.

Q. The last time you saw him what was the condition of his face that you could observe?

A. His nose wasn't as far as it had been over on his face, and his eye lid seemed to work better, his cheek is about as far in as it was.

Q. There is still some corrective work to be done on his cheek? A. Yes, sir.

Q. Going from the face to the lower part of the body, what did the examination reveal as to the lower part of the body? [122]

A. His lower body.

Q. Yes, sir.

A. There is a good deal of weakness in his legs still; some deformity on the right thigh, surgical scar. The right knees will flex 45 degrees and the left flexes about 60 degrees; the right knee lacks ten degrees of complete extension and the left knee lacks about fifteen degrees of complete extension.

Q. Can this man genuflex, can he kneel down?

A. Not unless he goes on his hands and knees.

Q. I wish you would have him go through this for the Court.

Mr. Casterlin: I shall object to this Court room demonstration.

The Court: Yes, the Doctor can testify as to his injuries, he can tell us about this.

A. He would have to have a chair and then get

(Testimony of William E. Greave.)

down on his knees or on his hands and knees first.

Q. You cannot have him show the limitations here while standing?

A. If he sits down he cannot get his knees to a right angle.

Q. Out in the hall during the recess he indicated the limitation that he has on bending his knee.

A. He can show how far he can bend his knee.

Mr. Young: We haven't a jury and it would not prejudice the defendant.

The Court: Go ahead. [123]

Q. (Asked of Mr. Downum): How far can you bend your knee?

A. (By Mr. Downum): That is as far as I can bend it (indicating).

Q. You used the term per centage to indicate the functional use of the knees that this man has——

A. ——I was referring to degrees in relation to 90 degrees being right angle or quarter circle.

Q. What else did you notice upon your examination?

A. There was considerable crepitation, some grinding sensation in the knees as he bends them. The right patella was quite irregular on palpation, you could feel the roughness when you palpate it. There was some lateral bowing of the femur.

Q. Bowing out to the side? A. Yes, sir.

Q. What was the cause of that, was it due to the fracture? A. Just the way it healed.

Q. And on the left leg?

(Testimony of William E. Greave.)

A. It is three-fourths of an inch shorter than the right.

Q. Assuming this man before the injury was five feet eleven inches and is presently 5 feet nine inches, would that be occasioned by overlapping of the femur bone?

A. Partly and partly because he stands with the knees flexed and the hip flexed, he doesn't stand as straight as he did before. He did complain of sharp pain in the right thigh at times, and his knees hurt when he sits, they stiffen up when he starts to move.

Q. Have you sufficient objective findings to substantiate these claims of pain?

A. I think he does have pain, of course, with the limitation of motion you expect some pain.

Q. The pain he complains of is sustained by clinical findings you have? A. That's right.

Q. In regard to the screws they are out in the soft tissue? A. Yes.

Q. Shown in the x-ray, now, Doctor, is it probable those bolts will have to be removed?

A. I think there is a good chance that it will be advisable to remove them.

Q. Does that necessitate the opening of his thigh and taking them out, a surgical operation?

A. Yes, sir.

Q. What would be the probable hospitalization of having that done?

A. It would be two weeks at least of hospitalization and probably cost \$150.00 or \$200.00.

Q. You have to go down and separate these thigh

(Testimony of William E. Greave.)

muscles and do considerable surgical work in order to retrieve those bolts? A. Yes, sir.

Q. I suppose there is the usual risk involved whenever you go beneath the skin?

A. Yes, sir. [125]

Q. Would the patient have to take a general anesthesia? A. Yes, sir.

Q. Has Mr. Downum arrived at a point where his condition is about fixed so far as physical condition is concerned?

A. I expect he will gain some strength.

Q. So far as utilization of the body is concerned has he just about attained the peak of functional accomplishment?

A. I think he probably will get increased motion in his knees.

Q. To any appreciable extent?

A. Yes, I think he will get them to 90 degrees in time.

Q. How long? A. Five or six months.

Q. Well it has been,—he was injured in May of last year, it is now the middle of June, about a year since the injury and he hasn't shown much improvement so far as this condition is concerned; you think five or six months will bring him to 90 degree use of his knees?

A. He didn't start to use his knees until December. I think that scar tissue will stretch out and his muscles will improve over another five or six months period.

Q. Doctor, these injuries, are they permanent

(Testimony of William E. Greave.)

and will they remain with him the rest of his life?

A. Yes, he will substantial permanent disability.

Q. This man was a farmer and common laborer, not possessed of any trade; a hard working man; farming and hard labor, [126] the only thing he is trained for. Now, what is the percentage of total disability is permanent disability, in your opinion?

A. I would estimate it as seventy-five per cent.

Q. Seventy-five per cent of total?

A. Yes, sir.

Q. That is a permanent situation that will remain with him the rest of his natural life?

A. Yes, sir.

Q. That is reasonable certain that it will remain with him the rest of his life? A. Yes, sir.

Q. What factor do you take into consideration in making that assertion?

A. He would have difficulty in competing for most jobs with able bodied men; there are some low paid jobs where he can perform almost as good as anybody else. With the visual disturbance he has, he should not drive a truck on the highway, nor a car, and in his condition he would have difficulty in getting down to milk a cow or pick spuds.

Q. What about walking over uneven ground, what would be his ability to do that?

A. He will have some difficulty.

Q. Could he go out and work eight hours a day as a swamper in the woods? [127]

A. No, sir, I don't think so.

Q. Could he go out and work plowing or driving a truck for an appreciable period of time?

(Testimony of William E. Greave.)

A. He is liable to have difficulty if he does. I never drove a truck myself, but I am sure he would have difficulty.

Q. He could probably run an elevator or be a bailiff in a Court room or something that didn't require physical labor? A. That's right.

Q. So far as working at hard labor he is through?

A. I think for most types of hard manual labor he would not be able to compete with able bodied men.

Mr. Young: That is all, you may examine.

Cross-Examination

By Mr. Casterlin:

Q. Calling your attention to exhibit 16 and exhibit 23 both being x-rays of the left femur, and exhibit 15 also. I will ask you to state if in your experience as an orthopedic physician and surgeon, the progress made between May 27, when the first of those x-rays was taken and December, is the expected progress?

A. Yes, the union is rather slow but when we get a severe injury of this nature we expect to blood supply to be injured and we expect slow healing.

Q. Does this x-ray show an exceptionally good recovery?

A. It is healed, you have a solid union, the injury to the [128] bone made a good recovery, of course he will still have some spikes sticking out of the bone.

Q. Taking into consideration the nature of the

(Testimony of William E. Greave.)

break it was a remarkable recovery? A. Yes.

Q. Calling your attention to exhibits 18, 19 and 22, which are x-rays of the right femur taken in May and June, what do you say as to the extent of the recovery there?

A. It is healed solidly and in pretty good alignment.

Q. Didn't the patient make a remarkable recovery with respect to the right femur?

A. It is a recovery, but I would not say remarkable.

Q. It is good?

A. He has a solid bone union.

Q. So far as the right femur is concerned, you don't expect much difficulty with that; you don't expect the patient will have much difficulty with the use of the right leg?

A. I think he is apt to have some arthritis in the right knee, he had a lot of scarring before I operated and there might be more if there is another operation.

Q. What scarring was there before you operated?

A. You cannot smash up the bone and muscle without some scarring.

Q. The patella on the right knee was injured?

A. Yes, sir.

Q. What about the recovery with respect to that? [129]

A. Well, he has some roughness both in the joint and on the surface.

(Testimony of William E. Greave.)

Q. Tell us whether roughness of the patella is common or uncommon in the human race?

A. Of course, patellas vary but he has an abnormal roughness in the joint and on the surface.

Q. Would you say that men never have roughness of the patellas? A. No, sir.

Q. Men with rough patellas are working in gainful occupations? A. Yes, sir.

Q. Respecting the arthritis or the arthritic condition due to the break of the femur,—arthritis is common in the human race, is it not Doctor?

A. Yes, sir.

Q. And is caused not alone by trauma but there are other causes? A. Yes, sir.

Q. People with arthritic condition are engaged in gainful occupations? A. Yes, sir.

Q. An arthritic condition resulting from a break of the femur would not be permanently and totally disabling? A. It might be.

Q. Totally disabling?

A. Yes, it might be.

Q. From this injury? [130]

A. I don't think arthritis is the entire cause of his difficulty but it does contribute to the disability and it may become worse.

Q. People who have never suffered a break of this kind sometimes have arthritis?

A. Yes, sir.

Q. And they are gainfully employed and engaged in farming with only an eighth grade education?

(Testimony of William E. Greave.)

A. Farmers or anybody engaged in heavy work who suffer slight injuries repeatedly suffer arthritis as they get older; this injury makes him get older faster.

Q. But with the same condition in two bodies you would not say that both could not follow gainful occupations. What I am trying to get at is that assuming that the arthritic condition developed, as it might, would that prevent him from following a gainful occupation?

A. It might be the cause of his being unable to work.

Q. Would you say from a medical certainty that would prevent him from making a living following a gainful occupation?

A. I cannot say that definitely.

Q. Now, this neck condition, you didn't find any trouble in the neck?

A. The alignment of the vetrebra, the natural curve is not present, I didn't find anything alarming on my examination.

Q. This anemic condition, what was that due to?

A. Loss of blood following the injury and the loss of appetite.

Q. Could that condition have existed prior to this accident?

A. He might have had something to interfere with his appetite.

Q. This anemic condition, you wouldn't say as a medical certainty was due to the accident?

A. I thought it was at that time.

(Testimony of William E. Greave.)

Q. Do you now? A. Yes, sir.

Q. Can you say as a medical certainty?

A. Nothing is certain.

Q. That is found in people who have had no accident of this kind? A. Yes, sir.

Q. Certain types of anemia might be built up in a short period of time under certain diet?

A. His blood can come back pretty well after he gets to eating and after a transfusion.

Q. From that anemic condition there has been a complete recovery? A. I think so.

Q. Now, those screws in his leg, those can be removed? A. Yes, sir.

Q. You were asked about that and you said the cost would be \$150.00?

A. That would be for the hospital.

Q. How much for the operation? [132]

A. Another \$150.00.

Q. You mentioned in connection with that, that there would be some risk? A. Yes, sir.

Q. What would the risk be?

A. He might bleed to death or die under the anesthetic or from infection following the operation.

Q. What is the probability of that?

A. Not very much but that is always present.

Q. The probability of expiring from that kind of an operation is pretty slight.

A. Yes, sir.

Q. And by the removal of these screws the pain he might suffer as a result of pressure on the screws would be relieved?

(Testimony of William E. Greave.)

A. Yes, sir, but he still would have the roughness on his femur; and he would still have some scar tissues when I got through.

Q. Would that scar tissue prevent him from engaging in a gainful occupation within the limits of his ability? A. No, sir.

Q. Now, the question of the length of the legs. I think you said that both of his legs were shortened?

A. Yes, sir.

Q. If they both were equally shortened would that cause any severe injury?

A. No, no severe injury, but it would interfere with the [133] balance of the muscles.

Q. In time would the muscles compensate?

A. Probably to a large extent.

Q. They would compensate better with exercise than without exercise? A. Yes, sir.

Q. Doctor isn't it a fact that with this patient the more exercise the more improvement; the more he moves around the greater the improvement?

A. If he moves too much he wears out his knees faster and he may develop arthritis quicker.

Q. At the same time, these weak leg muscles, would not they return by activity rather than by non-activity? A. Activity within reason.

Q. These weak leg muscles,—how long was this man in a cast?

A. He was in bed for at least six months.

Q. During what portion of that time was he in a cast? A. I don't know.

Q. Isn't it a fact that being in a cast and being

(Testimony of William E. Greave.)

confined to bed would make the leg muscles weak?

A. Yes, sir.

Q. Whenever there is musculature weakness by being confined to bed or inclosed in a cast, activity will build back the muscles faster than non-activity?

A. Yes, sir. [134]

Q. Doctor, people who have been bedridden during medication or in a cast for a long time,—isn't it good practice to prescribe exercise, work and mobility?

A. Yes, sir.

Q. Now about the knee?

A. Yes, sir.

Q. You say when you last examined him you found the right knee flexed 45 degrees and there was a ten degree loss from complete extension?

A. Yes, sir.

Q. The normal you take to be 90 degrees?

A. Normally it flexes more than 90 degrees.

Q. How much?

A. About 135.

Q. When you spoke of his knee flexion you found it about how much less than normal?

A. 90 degrees less than normal.

Q. Exercise will also improve that?

A. I think it will be improved in time.

Q. And the left leg and the knee flexion that would be the same as the right one; that would improve with exercise and activity over a period of time?

A. I expect some improvement.

Q. Now going to the shoulder injury, you testified that as a result of the injury to the shoulder some atrophy of the muscles of the right hand developed; where is that muscle? [135]

(Testimony of William E. Greave.)

A. In the web,—the web of the thumb. He cannot ebb and abduct his finger?

Q. How about bending and closing his fingers?

A. He does that.

Q. This abducting of the fingers what is your prognosis on that?

A. I don't think it will change,

Q. Why?

A. Because it has been a year and no improvement in the nerve at this time.

Q. That is a result of a nerve injury?

A. Yes, sir.

Q. Did you find that nerve injury consisted of a severance of the nerve?

A. No, I don't think it was cut, I think it was torn. I don't know just where it was torn, I didn't see the nerve, I saw the result of the injury.

Q. You say it was not due to a severance or cutting of the nerve?

A. I think it was torn.

Q. Where it is injured in that manner isn't there a tendency to pull itself back up again?

A. If the nerve is severed or cut and sewed back there is a chance for peripheral nerves to regenerate.

Q. I thought you said it was not cut, that there was no cutting, that it was torn? [136]

A. It was torn.

Q. What do you mean by torn?

A. I think it was pulled apart, pulled off where the nerve comes of the neck in the brachial plexus.

(Testimony of William E. Greave.)

Q. That is no chance for healing of that so that a complete extension of the fingers will result?

A. Some regeneration, yes, but I doubt that it will make any real difference.

Q. Assuming there is no regeneration, what effect does that have in the use of his hands in gainful occupations?

A. He won't use his thumb as well, and he won't be as dexterous in fine work.

Q. Isn't it true that a man with a right thumb amputated can be engaged in gainful occupation?

A. Yes.

Q. And isn't it true that there are many men with their right thumb amputated engaged in gainful employment?

A. I think there are.

Q. Isn't it true that men with thumb and index fingers amputated are gainfully employed?

A. Yes, sir.

Q. Isn't it true that a person with no fingers except his index finger and thumb could still engage in gainful occupations?

A. Yes, sir. [137]

Q. You stated that his disability was seventy-five percent total for farming, do you think there are any other operations or occupations this man could follow?

A. Yes, sir.

Q. And could follow gainfully?

A. Yes, sir.

Q. So if he entered some other occupation he would not necessarily be seventy-five per cent disabled?

A. Possibly not, for other occupations.

Q. Now, Doctor, of course, you are familiar with

(Testimony of William E. Greave.)

the rehabilitation of the boys for the wars by education? A. Yes, sir.

Q. Isn't it a fact that there are many occupations that this man could engage in, being in the condition you found him in?

A. There are several occupations he could be employed in.

Q. That is taking into consideration that he has only an eighth grade education and he has been primarily engaged in farming? A. Yes, sir.

Q. You testified that there are some jobs that he can perform as good as anyone else?

A. Probably.

Q. When you say seventy-five per cent disability, that has particular reference to farm activities? [138] A. Yes, sir.

Q. Did you have anything to do with the facial condition?

A. I just called Doctor Poll to take care of that.

Q. This diplopia, that is limited to his downward and right and left vision?

A. I didn't testify to that.

Q. Do you know how extensive that is?

A. I never tested him as to that.

Q. This weakness in the right arm, how extensive is that weakness?

A. That weakness is generally or chiefly confined to his hand, inability to use the thumb, to grab with the fingers, this way.

Q. Closing his hand, such as lifting a basket of eggs, he could do that?

(Testimony of William E. Greave.)

A. He can flex the fingers pretty well.

Q. No weakness in the grabbing, the opposing fingers and the thumb?

A. Yes, there is a weakness.

Q. If he didn't use the thumb but just the fingers to complete the grab, he could lift a weight?

A. That's right.

Q. This crepitation in the knees, is that peculiar to this person?

A. Lots of people have crepitation. [139]

Q. And those people are engaged in gainful occupations? A. Some of them.

Q. Many occupations are open for them that is gainful?

A. Conditions may keep people working with pain in the knees. However, if this man abuses his knees he is apt to develop more pain in his knees.

Q. This lateral bowing of the left femur that was due to the fracture? A. Yes, sir.

Q. Would the bowing of the femur cause a man to be permanently disabled?

A. If it was great enough.

Q. What degree of bowing does this plaintiff have? A. Not severe.

Q. Is it greater than we have in a lot of buckaroos or race horse riders?

A. It is more than average, yes.

Q. More than you find in broncho busters?

A. Yes, unless the broncho buster had a fractured femur or had rickets when he was young.

(Testimony of William E. Greave.)

Q. Would this bowing cause this man to not be able to follow a gainful occupation?

A. Not in itself.

Q. Which leg is shorter, Doctor?

A. The left. [140]

Q. That left leg being three-quarters of an inch shorter than the right, what effect would that have?

A. It causes some strain on the lower back and might result in arthritis in his lower back.

Q. Is there a proper treatment to correct that?

A. The simplest thing is to build up the left heel.

Q. That removes any probability of injury to the spine or back?

A. It decreases the strain on the spine.

Q. Many people that complain of pain in the back have been completely cured by that treatment?

A. They have been relieved.

Q. Yes, there has been relief? A. Yes, sir.

Q. That has been so complete that they have been relieved of pain entirely? A. Yes, sir.

Q. Would his height,—his change in height have anything to do with his following a gainful occupation? A. I don't think so.

Q. Now, to the final question, what is this man's percentage of disability with respect to gainful occupation that he could follow?

A. Well, as a lawyer I don't think this would interfere with his work, but as a farmer it is a great handicap. [141]

Q. What is his percentage of disability with re-

(Testimony of William E. Greave.)

spect to occupations which he can follow. You testified there were some?

A. He could sell pencils or shoe strings probably as well as anyone else. He could operate an elevator pretty well with a built up shoe and with a seat in the elevator. He would get tired, but he could do pretty well.

Q. What about driving a truck?

A. He would have difficulty getting off and on the truck. I think he would be able to start the thing and work the levers and brakes.

Q. How about stationary engineer?

A. He could probably run a stationary engine if he was educated for that work, he may do it pretty well.

Q. Do you say that he could not learn to be a stationary engineer?

A. No, I think he is capable mentally.

Q. And what about a hoist-man?

A. He could do that.

Q. How about a stock-room checker?

A. He would have some difficulty being on his feet all the time.

Q. What about a time-keeper?

A. I think he could work as time-keeper if he didn't have to go around checking on a big plant.

Q. So there are numerous occupations besides selling pencils, popcorns and chewing gum on the street corner that this man could engage in?

A. Yes, there are.

Q. You have a fixed fee for testifying in this case do you Doctor?

(Testimony of William E. Greave.)

A. I haven't put in any. I made my fee for the entire case to this time at \$700.00.

Q. Does your pay for testifying here depend on the outcome of this case? A. I believe so.

Mr. Casterlin: That is all Doctor.

Redirect Examination

By Mr. Young:

Q. Your fee for the care of this man is \$700.00?

A. Up to this time.

Q. Do you think that is reasonable considering the nature of the treatment and the time involved?

A. Yes, sir.

Q. You have had considerable experience in industrial work concerning the employment of men by corporations, that is as to the physical condition and ability of the men at the time they are employed?

A. I know something of that, yes.

Q. Is it a fact that the large employers won't employ men [143] broken up in body for any kind of a job?

A. That is a risk they will not take. There is a risk in employing men at any time, and this is greater than they will take.

Q. It was suggested that my client could become a stationary engineer or a hoist-man, possibly having in mind some building project,—Now, Doctor, from your experience in the industrial field do you know whether this man would be able to work with able-bodied men and do the work of an able bodied man in that field.

(Testimony of William E. Greave.)

Mr. Casterlin: We object to that as being speculative.

Mr. Young: Yes, perhaps it is, I think his Honor will take judicial notice of that.

The Court: Yes, this objection is sustained.

Q. This seventy-five per cent of total disability goes to the general picture of hard manual labor rather than limited just to farming?

A. Yes, sir.

Q. Anything that would require physical strain on Mr. Downum's part, he cannot do, is that correct?

A. Yes, sir, it is correct.

Q. And if it required no physical strain he could do it?

A. That's right.

Mr. Young: That is all. [144]

The Court: Doctor, would you be able to give an opinion as to the percentage of disability this man would have generally for all kinds of work knowing him as you do. I take it there would be some disability for any kind of work?

A. Yes, sir, he is going to have difficulty in amusing himself even; and to do any kind of work——

The Court: Doctor, if you were fixing a percentage such as Doctors fix in the young men at the veterans hospitals, in fixing the percentage of disability for the Government such as they do, what would you fix? That is also taking into consideration all the things that could asked you about?

A. Well, the Veterans administration seem quite generous in most cases. I would say in this man's case it is sixty to seventy-five per cent.

(Testimony of William E. Greave.)

Q. The Court: That is the amount of disability he will have? A. Yes, sir.

The Court: I take it he was totally disabled all the time he was under your care?

A. Yes, sir.

The Court: What do you consider to be his disability at this time, what is the percentage of disability to work right now? [145]

A. I think it is over seventy-five per cent right now; it is eighty percent or more now. He cannot work a full eight hours, he cannot be on his feet for any length of time, and he cannot be on the job at all for a full working shift.

Q. The Court: What about a hundred per cent disability, how long did that exist after his injury?

A. He could do light part time work for the past two months.

The Court: That is all I have to ask.

Recross-Examination

By Mr. Casterlin:

Q. Mention was made of physical stress or strain, and what the effect would be on this man; is there any occupation in which there is no physical stress or strain?

A. None as I know of.

Mr. Casterlin: That is all.

Mr. Young: That is all, Doctor.

DR. ROBERT H. POLL

being called as a witness by the plaintiff, after being first duly sworn, testifies as follows:

(Testimony of Dr. Robert H. Poll.)

Direct Examination

By Mr. Young:

Q. Dr. Poll, you are a licensed physician?

A. Yes, sir.

Q. Licensed in the State of Washington?

A. Yes, sir. [146]

Q. Practicing in Spokane? A. Yes, sir.

Q. Do you specialize in any branch of your profession? A. Yes, sir.

Q. What is that?

A. Disease of the ear, nose, eyes and throat.

Q. Briefly, Doctor, relate your education and qualifications? A. I am——

Q. Let me ask, you are a graduate from medical school? A. Yes, sir.

Q. And you did special work after graduation?

A. Yes, at the University of Iowa and Western Reserve in Cleveland.

Q. And you took special work there in the field in which you are applying yourself?

A. That's right, yes, sir.

Q. You saw Raymond Downum at the request of Doctor Grieve? A. Yes, sir.

Q. Give the history as you made it, or as you have it, you may look at your notes to refresh your recollection?

A. I saw Mr. Downum on the 29th of May, 1947, at the request of Doctor Grieve. The patient was in bed at the Sacred Heart hospital with his legs in a cast and he appeared to be very ill. He complained, with regard to my particular field, of

(Testimony of Dr. Robert H. Poll.)

suffering an injury to the head in which a crushing blow [147] was dealt on the left cheek resulting in double vision and a deformity of the nasal pyramid and obstruction in breathing. Examination revealed a depression of the left cheek; a dislocation of the nose to the right; there was obstruction to the breathing; and this double vision and our other diagnosis was comminuted fracture, nasal fracture and depressed fracture of the zygomatic bone in the cheek, nerve injury to the muscles moved the left eye.

Q. What treatment did you give?

A. I realigned the nasal fragments and held them in position with plastic cast. I felt that was all I should do at that time because of his general condition and the area involved. I didn't feel that the depressed fracture in the cheek should be attended when I first saw him.

Q. On that occasion it would be your judgment that he might have further shock by any other treatment?

A. Yes, he didn't seem to be a candidate for greater treatment than realigning the nose at that time.

Q. Calling your attention to Plaintiff's exhibit 27, does it have a picture of your patient in that group. Do you recognize him in that picture?

A. This could be Mr. Downum.

Q. Assuming that it is, does the nose——

Mr. Casterlin: We object to going into that picture until it is admitted in evidence. [148]

The Court: The Court will strike it if it is not connected up. You may continue.

(Testimony of Dr. Robert H. Poll.)

Mr. Young: This picture was taken about four years ago. I offer it in evidence at this time?

Mr. Casterlin: No objection if they know when it was taken.

The Court: It may be admitted.

Q. Assuming this is a picture of Mr. Downum (indicating) is his nose in midline at that time, in that picture? A. Yes, it is.

Q. When did you last see Mr. Downum?

A. The 28th of May, 1948.

Q. Did you observe his condition at that time?

A. Yes, I did.

Q. And you have seen him here today?

A. Yes, sir.

Q. What is the condition of his nose with respect to being in midline?

A. The alignment of the nose didn't stay where I put it at the time of the reduction of the fracture; in approximately two weeks it had shifted itself to the present position.

Q. Will you describe it so, if anyone happens to read the record they would know what we are talking about; what position is the nose in now?

A. Definitely to the right, especially in the upper half, from [149] the elongation of the left side of the nasal pyramid.

Q. What was the cause of that shifting?

A. Shifting to its present position?

Q. Yes.

A. I feel that the nose shifted back to its present position because of the spring in the nasal septum which sprung it out of line after it was once set.

(Testimony of Dr. Robert H. Poll.)

That septum condition has since been corrected surgically because it was obstructing his breathing.

Q. What did you observe about the tear duct?

A. Our attention was called to the tear duct some weeks after I first saw him. He said that the tears ran down his cheek on the left side and there was quite a bit of mucous or puss-like discharge in the eye. I attempted to irrigate which showed that it was occluded.

Q. By occluded you mean it was plugged?

A. Yes, sir.

Q. What did you do by way of opening that tear duct?

A. We made a new opening between the tear sac, which is located in the depression on the side, here in the narrow part of the nose—we made a new opening between that sac and inside of the nasal vault. That is called anastomosis.

Q. What did you observe in connection with the diplopia?

A. It was present as the patient looked downward.

Q. Is that something that will remain with him the rest of his [150] life? A. I think it will.

Q. Now the condition of his nose, what is necessary to put the nose in midline, to straighten up his appearance?

A. It will have to be refractured and held in position by more positive appliance than I was able to use the first time.

Q. There is some element of risk in that operation? A. It is not severe.

(Testimony of Dr. Robert H. Poll.)

Q. What would the time of hospitalization be?

A. Minimum of a week.

Q. And what would the probable cost be?

A. \$150.00 to \$200.00 I cannot say exactly.

Q. There would be the cost of anesthesia?

A. Yes.

Q. And bandages, medicine, X-ray and operating room? A. Yes, sir.

Q. What would your fee be for doing the correction?

A. Our fee would be around two hundred dollars?

Q. Has he functional disability by reason of the nose in its present condition?

A. No, I don't think he has a great element of functional disability in his nose, but it certainly is a cosmetic defect of considerable magnitude?

Q. What does the diplopia indicate—is that a permanent condition?

A. Yes, sir, I think so. [151]

Q. In all reasonable certainty is that permanent?

A. Yes, sir.

Q. What is the effect of this diplopia in the man's ability to work?

A. Well, at occupations requiring good vision, it is a very marked disability.

Q. What is that?

A. When he is looking below the midline he sees two of everything instead of one. It results in confusion and the possibility of, say, pushing the wrong button, if he were handling something like that.

Q. He might make a first-class stationary engi-

(Testimony of Dr. Robert H. Poll.)

neer was suggested here, now, Doctor, would that play a part in mechanics, in handling machines or any kind?

A. I wouldn't consider him a good candidate for that job.

Q. What about driving trucks along the highway for commercial purposes, could he get a license for that?

A. I don't know the state laws with regard to one-eyed persons but I don't think he would be able to get a license.

Q. It would not be a safe thing?

A. His judgment of distance would be impaired and his depth perception would be bad.

Q. Doctor, do these films indicate very much—strike that—calling your attention to exhibit 25 what is shown in that film? [152]

A. These are pictures on the 25th of August, and were taken to rule out the presence of sinus infection. He had a draining fistula and we didn't know whether it was coming from the sinus or whether it was connected with his tear duct which we subsequently operated and that promptly healed. These were taken for sinus pathology. You see this separation at this area here (indicating) this is the orbit where the eye is; this you can see is pulled down this way—this side here is pulled down. You can see this shape is not the same as on this side. This is the injured side; there is a suggestion of shifting of the bony shadows to this side.

Q. The one you were referring to is exhibit 26?

(Testimony of Dr. Robert H. Poll.)

A. Yes, sir.

Q. Now exhibit 25?

A. It doesn't show much in this view. These are sinus pictures and I don't think it has any value from the standpoint of the fracture.

Q. Calling your attention to exhibit 28 marked for identification, what does it show in the way of pathology?

A. It shows the displacement of the zygome on the left side.

Q. That is the cheek bone?

A. Yes, sir, the one under the eye on the left side.

Q. When was the last time you examined your patient, Mr. Downum? A. May 28, 1948.

Q. What condition did you find him in then with respect to the diplopia, or did you give him an examination to that extent?

A. This diplopia was for all purposes exactly the same as when I first studied him at my office some time in December.

Q. The condition of his nose?

A. His nose was the same on discharge from the hospital.

Q. Did you observe some scarring about his face? A. Yes, sir.

Q. What did you observe as to that?

A. I observed a scar in his forehead; a healed scar on his left cheek where the draining fistula was present before we operated his tear sac.

Q. Do you recommend that this nose be refrac-

(Testimony of Dr. Robert H. Poll.)

tured and put back in position? A. Yes, sir.

Q. What occasions that recommendation?

A. Because I consider the nose in its present condition highly disfiguring.

Q. That is a disability?

A. Yes, I consider it a disability.

Q. You did state that his condition as far as the eyesight—the diplopia is concerned, I think you said you regard that as permanent and will remain with him the rest of his life?

A. Yes, sir. [154]

Q. These other conditions you testified to are permanent subject to the modification that they might yield to surgery? A. Yes, sir.

Q. Are you prepared to testify as to what in your opinion is the permanent disability of this man for general purposes, so far as occupations are concerned basing your testimony upon knowledge of him as a patient you have seen and observed?

Mr. Casterlin: Objected to on the ground that this Doctor's examination doesn't run to the entire disability but is confined to the eye, ear, nose—just to the facial condition.

The Court: Have you studied his general condition? A. No, sir, I haven't.

The Court: Objection sustained.

Mr. Young: That is all, Doctor.

Cross-Examination

By Mr. Casterlin:

Q. Doctor Poll——

The Court: Just one question before you start

(Testimony of Dr. Robert H. Poll.)

your cross-examination Mr. Casterlin. Doctor, this disfigurement around his left eye, can that be corrected?

A. That is a result of a depressed fracture of the cheek bone which I didn't deem wise to elevate when I first saw [155] him because of his condition at that time. At this time action can be taken by placing a graft of tissue under the skin, the bone will always be down.

The Court: There will always be some disfigurement?

A. Yes, but he can be made considerable better, that is, considerable improvement can be made but it will not change unless he has some building up to supply more tissue.

Mr. Young: Now you may examine.

Cross-Examination

By Mr. Casterlin:

Q. Do you do that kind of work?

A. Some type of plastic surgery.

Q. This kind of operation, the lifting of muscles of the left side of the face?

A. He is not a candidate for muscle lifting.

Q. How would you remedy that?

A. I feel that an implant of faccia from some other part of the body or a plastic implant.

Q. Could you do that? A. Yes, sir.

Q. Did you include that in the cost you gave in response to Mr. Young's question?

A. No, sir, my fee was only for straightening the nose. [156]

(Testimony of Dr. Robert H. Poll.)

Q. What would be a reasonable charge for correction of the depression on the left side of the face?

A. I think about \$200.00 would cover that procedure for the surgeon's fee.

Q. Is there any reason why that correction could not be made at the time the nose correction is made?

A. I don't think it should be done at the same time because a refracture of the nose may have to be done by chiseling and I don't want to put a graft in loosened tissue where there is apt to be a hemorrhage. It could be done later.

Q. And would the question of hospitalization enter into that?

A. It should not be at the same session.

Q. How about the nasal operation with the operation for removing the screws from the plates in his legs?

A. That could be at the same time, yes.

Q. There would be only one hospital charge for that?

A. Yes, sir.

Q. The tear duct, that has been corrected?

A. Yes, sir.

Q. The nose and face, the diplopia, there has been some question about the activity in which he could engage because of that, now, would crusted lense over that eye correct that?

A. The blinding of one eye would stop the diplopia; if you take the eye out it would also stop it.

Q. Stationary engineer, he could perform that work if he had [157] a glazed or crusted lense over his left eye without any trouble?

(Testimony of Dr. Robert H. Poll.)

A. I don't subscribe to that "without any trouble" his judgment is not as good with one eye as with two. However, he does not have any serious handicap in using the one eye.

Q. There are lots of one-eyed people gainfully employed? A. Yes, sir.

Q. They carry on with one eye?

A. Yes, sir.

Q. So that if this young man was engaged and had trouble, then the covering of that eye with a glazed lense would permit him to go ahead?

A. Yes, he would eliminate the diplopia and if his task did not require too great a perception of distance and so on he could carry on.

Q. There can be no muscular correction so this diplopia will be cured?

A. I don't feel that muscle surgery is much benefit in this paralytic squint—that is a term we apply.

Q. That is the cause of diplopia?

A. There are devices and procedure designed to correct that but they do not yield enough results to keep him from seeing double. I don't think it would be satisfactory. [158]

Q. How long a period would it take to perform this nasal operation and correct the facial condition?

A. Two weeks with the nose and perhaps be in the hospital four or six days with the other procedure.

Q. If he started in now with these corrections, in the course of three or four months these opera-

(Testimony of Dr. Robert H. Poll.)

tions would be concluded? A. Yes, sir.

Mr. Casterlin: That is all, Doctor.

Redirect Examination

By Mr. Young:

Q. Would you guarantee the result of this?

A. No, sir.

Q. You would pursue certain technique and hope to obtain certain results?

A. Yes, I would, and I would take precaution to keep that nose from slipping again.

Q. You could build up the depression in his cheek by putting in an implant of fascia or plastic.

A. Yes.

Q. When you do that you are encountering certain muscles involved in that area?

A. Yes, sir.

Q. One of the greatest problems that confronts a surgeon—a plastic surgeon is the encountering of muscle. [159]

A. Yes.

Q. Because they don't always respond equally?

A. Yes.

Q. You increase the dead scar tissue when you do that operation?

A. Yes, sir.

Q. And the likelihood and work involved in this muscle lifting and inserting the implant, is there a likelihood of getting greater disfigurement than already exists?

A. The deformity or disfigurement exists and if the likelihood of increasing the deformity outweighs the chances of improvement I wouldn't touch him.

Q. You have seen cases of physicians in good

(Testimony of Dr. Robert H. Poll.)

faith undertaking to improve a cosmetic condition by implant or graft of some foreign sterile matter in a depression and come out with a result that was less complimentary than when he went in?

A. It can be that way.

Q. It is not a simple matter when you operate and it involves those muscles mentioned?

A. That's right.

Q. (By Mr. Young): That is all.

Recross-Examination

By Mr. Casterlin:

Q. You wouldn't hesitate to attempt those two operations, the nasal and facial operation on this patient? [160]

A. No, I wouldn't. I might want some help with the graft, but so far as the reconstruction of the nose was concerned I would go ahead with that.

Q. There was mention that there might be worse disfigurement, and you said that you wouldn't attempt it if it would result in worse disfigurement?

A. I would attempt it. I would be hopeful of improvement.

Q. Your judgment is that there would be improvement?

A. Yes, I believe there would be.

Mr. Casterlin: That is all.

Redirect Examination

By Mr. Young:

Q. Doctor Poll, in your opinion without that type of operation this disfigurement of his is permanent? A. Yes, sir.

(Testimony of Dr. Robert H. Poll.)

Q. And it would be with him the rest of his life? A. Yes, sir.

Q. If he is to be rid of it he has to undergo what is indicated here? A. Yes, sir.

Q. And take his chances? A. Yes, sir.

Mr. Young: I think that is all, Doctor.

We had Doctor Lynch, a nerve specialist examine this man and he rendered a bill for \$25.00. [161]

Mr. Casterlin: I admit that if Doctor Lynch was present he would testify that he performed the service and that a reasonable charge for the same was \$25.00.

Dr. Grieve: I called him to try to determine whether this nerve injury was due to the fracture and see if we could do anything about it.

Mr. Young: Was the charge reasonable?

Dr. Grieve: Yes, it was.

RAYMOND C. DOWNUM

Being recalled, having heretofore been duly sworn, testifies as follows:

Direct Examination

By Mr. Young:

Q. Mr. Downum, have you attempted to do any light work since this accident?

Mr. Casterlin: Objected to as incompetent, irrelevant and immaterial and it invades the province of the Court?

Q. I call your attention to the fact that you said that you thought you could be a service station attendant, what effort did you make along that line?

A. Yes, I figured that I could do that kind of

(Testimony of Raymond C. Downum.)

work and I tried to remove a tire from the frame and I knew right away that I wouldn't be any good around a service station. [162]

Q. What difficulty did you have in removing the tire?

A. I couldn't get the tire tool down into the rim to loosen it up.

Q. Was it because you couldn't bend your knee?

A. Partly and because I couldn't use my foot.

Q. What was your model A truck worth before the collision? A. \$150 to \$175.00.

Mr. Casterlin: I admit its value at the amount alleged \$150.00.

Q. And it was completely destroyed?

Mr. Casterlin: I admit that it was destroyed.

Mr. Young: That is all, Mr. Downum. You may examine, Mr. Casterlin.

Cross-Examination

By Mr. Casterlin:

Q. On this particular date when you were driving toward Bonners Ferry you stated that you were driving slowly, why were you driving slowly?

A. On account of the dusty condition.

Q. I think you testified that you didn't see this other car until it was about two car lengths from you? A. Yes, sir.

Q. Why was that?

A. On account of the dust.

Q. You testified that there were other vehicles passed you [163] that morning? A. Yes, sir.

Q. Had you passed any car before this accident?

(Testimony of Raymond C. Downum.)

A. I didn't pass any. I met three vehicles coming from Bonners Ferry.

Q. How long a time expired between the time when you passed, or when you met the last vehicle and the time the accident occurred?

A. I don't know. I never thought about that, but it was possibly three or four minutes.

Q. Was that a Government car?

A. Yes, I think so.

Q. So that the car with which you collided was following in the middle of a line of cars, or a procession of other cars?

A. I don't know.

Q. Because of all these cars together, a dust cloud had formed—a continuous cloud of dust along the road? A. That's right.

Q. The wind was blowing from the south; that would blow the dust off the side of the road. Was it clear enough so you could see distinctly the shoulder? A. Absolutely, yes.

Q. You didn't have any difficulty with that?

A. No, sir. [164]

Q. Your vision was limited to about thirty-two or thirty-five feet? A. Yes, sir.

Q. Did you have lights on? A. No, sir.

Q. Did this Government car have its lights on?

A. No, sir.

Q. Do you know the rate of speed it was going?

A. No, sir.

Q. If it had not been for the dusty condition there would not have been an accident?

(Testimony of Raymond C. Downum.)

Cross-Examination (Continued)

By Mr. Casterlin: [167]

Q. I take it that up until the time you sold your farm you were working for yourself for about five years? A. That's right.

Q. When did you sell your ranch?

A. I think it was about the 5th of March last year.

Q. In 1947? A. Yes, sir.

Q. After that you went to work on the dikes up there and also this other employment at \$1.25 an hour? A. Yes, sir.

Q. Was that steady employment?

A. The dike work wasn't. That was just emergency, I helped during the high water.

Q. The other employment was steady work?

A. Yes, sir.

Q. Where was that? A. At Boyd-Connley.

Q. What were you doing there?

A. Around the seed-house at that time.

Mr. Casterlin: That's all.

Redirect Examination

By Mr. Young:

Q. Mr. Downum, you stated in answer to Mr. Casterlin that if it hadn't been for the dust there would not have been an accident. Do you mean that, did you understand the question? [168]

A. Well, if I had saw that truck a hundred feet away I would have went over the bank.

Q. You would have gone over the bank?

A. Yes, to keep from hitting it.

(Testimony of Raymond C. Downum.)

Q. If the truck has been operating as you were operating and watching its side of the road there would not have been an accident, would there?

A. That's right, there wouldn't.

Q. There wasn't anything about the dust that compelled the driver of the truck to run on your side of the road? A. No, not that I could see.

Q. He had as good an opportunity to drive as carefully as you did? A. That's right.

Q. Doctor Poll rendered you a bill for \$300.00. Is that bill paid? A. No, sir.

Q. He is billing you for \$300.00?

A. That's right.

Mr. Casterlin: I will admit if the Doctor were here testifying he would testify that the services he rendered this plaintiff was worth \$300.00, and I will make the same admission as to Doctor Grieve's bill.

Mr. Young: I think the Court takes judicial knowledge or notice of the mortality table. It is alleged that he had a certain expectancy of life.

Mr. Casterlin: It is understood and agreed that the Court takes judicial notice.

The Court: We will recess at this time until 10 tomorrow morning.

10 o'clock a.m. June 11, 1948

ALEXANDER BARCLAY, JR.

Called as a witness by the defendant, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Casterlin:

Q. Will you state your name, Doctor?

(Testimony of Alexander Barclay, Jr.)

The Court: I am not sure that the record shows that the plaintiff has rested.

Mr. Young: Perhaps we did not announce that we rested, but the records should so show.

The Court: Very well, now Mr. Casterlin you may continue with your direct examination.

Q. You reside in Coeur d'Alene?

A. Yes, sir.

Q. And are a practicing physician and surgeon?

A. Yes, sir.

Q. And the nature of your practice is general practitioner? A. That's right.

Q. You are licensed to practice in Idaho?

A. Yes, sir.

Q. And have been for how many years? [170]

A. Almost ten years.

Q. (By Mr. Casterlin): Do you question the Doctor's qualifications?

Mr. Young: Not at all, I admit them.

Q. Are you acquainted with Mr. Downum, the plaintiff in this case? A. Yes, sir.

Q. State whether you gave him a physical examination? A. I did.

Q. When? A. The second of June, 1948.

Q. Where? A. My office.

Q. Tell us whether or not your examination involved the shoulder condition and the right hand condition? A. It did.

Q. What were your findings with respect to that?

A. Mr. Downum had suffered from an injury to the Ulnar nerve at the time of the accident; this

(Testimony of Alexander Barclay, Jr.)

nerve was not severed but in all probability it was stretched, that is, it was torn. Damage to the nerve was not complete at any time; that is, at any time according to the history as to the motion in the hand. The only external evidence is a small scar on the right shoulder in this frontal area [171] which could not have been deep enough to cut the nerve as the main nerve passes under the collar bone rather deep. Originally there is a history that he had numbness in the ring finger and little finger with weakness in the muscle in the web of the thumb which is compatible with the present ulnar nerve injury. Since that time sensation in the fingers has returned and the only damage noticed now is when his hand is cold and he still has moderate atrophy in the back of the hand and the muscle in the web, but he thinks this is improving. If this nerve had been cut chances of his ultimate recovery would be very poor unless it has been sutured together. However, in case of ulnar nerve injury to the brachial plexus where the nerve is torn, the majority of cases return to normal so the chances of his getting the use of this hand is pretty good.

Q. Your prognosis is good? A. Yes, sir.

Q. Return to normal will be accomplished in about what length of time?

A. I don't want to be misunderstood on that point. It is not certain that this nerve will return entirely to normal but the chances of its returning to normal are very good. It should come back within the next six months I would judge. [172]

(Testimony of Alexander Barclay, Jr.)

Q. To what degree has Mr. Downum been handicapped by the injury to the ulnar nerve?

A. Some of the fine motions, he has not the ability to do that fine work, the question of using the thumb, in that he has very little use of his hand in that manner.

Q. The injury to this nerve goes to the—strike that—did the injury of this nerve cause any failure to close the hand, to grasp? A. No, sir.

Q. Would the injury to that nerve in any way affect the elevation of the hand?

A. You mean the motion of the elbow?

Q. Yes. A. No, sir.

Q. Or any motion of the shoulder? A. No.

Q. What motion of the fingers would be affected?

A. Adduction and abduction and the apposition of the thumb to the other fingers of the hand.

Q. So that any activity which required the lateral opening of the fingers would be affected?

A. Yes, sir.

Q. I will ask you whether or not you examined him with reference to the flexion of the lower extremities? [173]

A. He has rather a marked limitation of motion in both knees. He cannot fully extend his knee, nor can he flex his knee to right angle.

Q. That condition is a result of what?

A. That condition is a result of having his leg or both legs encased in a cast together with traction he had on the bone for a period of approximately four months. If you take a normal leg and put it

(Testimony of Alexander Barclay, Jr.)

in a cast for that time you would get a stiffness of the knee.

Q. What is your prognosis as to what—what is your opinion as to the degree of motion that he has in the knees now?

A. He lacks about ten degrees of being able to extend his leg fully. He can flex; the normal range of motion in the knee is around 135 degrees which ranges from 180 this way back to about 45 this way.

Q. The 180 degrees is when the leg is straight?

A. Yes, sir.

Q. As you put the heel back toward the buttocks that is the degree you mentioned? A. Yes.

Q. He lacks about ten degrees of straightening his leg?

A. Yes, entirely, his range of motion is from 10 to 35 or about 25 degree motion in the knee and the left is about five degrees better than the right.

Q. He has about 25 degree rear motion?

A. Yes, sir. [174]

Q. The normal would be what? A. 135.

Q. At the conclusion of your examination respecting the leg motion did you form any opinion as to the prognosis? A. Yes, sir.

Q. What is that?

A. I think it will improve as he goes along.

Q. What should he do in order to effect this improvement?

A. He is going to have to use it, walking on it. He is going to have to force himself to bend it more and more to break that scar tissue that formed in

(Testimony of Alexander Barclay, Jr.)

the knee. It is going to be very hard to do but he is going to have to do it to increase the motion.

Q. It is hard from a physical or mental sense?

A. As far as pain goes.

Q. It has to be determined by exercise, the flexing of the leg, and that will improve the condition?

A. Yes, sir.

Q. And it takes determination?

A. Yes, sir.

Q. By exercise and determination do you have an opinion as to what the change would be?

A. It probably will be more in the left leg, because in the right he also fractured the knee-cap. Now, that is entirely a guess. He probably can increase his range of motion in the left knee until he gets 80 per cent [175] of his motion back, in the right knee it would be less, possibly seventy per cent in the right knee.

Q. Did you find any difference in the length of the legs? A. Yes, sir.

Q. What was that difference?

A. The right leg is $\frac{5}{8}$ inch shorter than the left.

Q. Can that condition be corrected?

A. It would not be corrected but it can be compensated for.

Q. You mean by using a heel lift and building up the shoe on that side? A. Yes, sir.

Q. What result would you expect by this compensation?

A. He would overcome the compensatory tilt of

(Testimony of Alexander Barclay, Jr.)

the pelvis; that sclerosis of the spine and this low back ache he notices now.

Q. Would that back ache disappear if this was compensated by a heel lift?

A. In all probability.

Mr. Casterlin: That is all, Doctor.

Cross-Examination

By Mr. Young:

Q. Doctor, it is a fact is it not that regeneration of nerve tissue is not the same as soft tissue or bone tissue? A. That is correct.

Q. When you stated that six months would see some improvement [176] in the nerve injury that my client has in his arm and hand, that is somewhat speculative? A. No, sir.

Q. He has been twelve months with progressive atrophy in the hand; what causes you to fix a term of six months for conditional to complete recovery from that?

A. According to the history given me this hand has improved all along. It is better all the time. He has overcome the sensory loss in these two fingers (indicating).

Q. What part of the nerve supply controls the muscle tone and muscle substance in the hand?

A. The interossie muscle of the hand are supplied by the ulnar nerve.

Q. What part of the ulnar nerve sustains the muscle tone? A. The Motor nerve.

Q. It is possible to have an injury to the sensory nerve and not to the motor part of the nerve.

(Testimony of Alexander Barclay, Jr.)

A. That depends on what part of the nerve you——

Q. Let me put it this way. The sensory and motor nerve—that is, you can have a disturbance of the sensory of the ulnar nerve without disturbance of the motor? A. Yes, sir.

Q. And you can have a disturbance of the motor nerve and not have anything involving the sensory part? A. That is true. [177]

Q. What we have here is a disturbance of the motor part of the nerve? A. Yes, sir.

Q. Assuming that the sensory part is near normal? A. That's right.

Q. You could have a complete severance of the motor nerve and not have a disturbance of the motor nerve? A. That is wholly problematical?

Q. It is possible? A. I think it would be.

Q. There is some involvement of the sensory nerve? A. Very minor.

Q. There is a definite indication of atrophy—definite indication that the motor part of the ulnar nerve is damaged?

A. Yes, but not complete. If it were complete he would not be able to move the muscle.

Q. It is your opinion that six months will show some improvement? A. Yes, sir.

Q. You don't expect complete recovery?

A. It is possible.

Q. That complete recovery is in the realm of speculation. A. Yes, sir.

Q. You do expect some recovery?

A. Yes, sir.

(Testimony of Alexander Barclay, Jr.)

Q. You examined his legs? [178]

A. Yes, sir.

Q. You took an X-ray of his legs?

A. Yes, sir.

Q. He did have two fractures of the femur?

A. Yes, sir.

Q. What type of fracture?

A. Comminuted fracture.

Q. One of the fractures was overlapping?

A. Yes, sir.

Q. Where you have an overlapping that is an occasion of the shortening of the leg?

A. Yes, sir.

Q. That was true here? A. Yes, sir.

Q. The bones are united in this fashion (indicating)? A. Yes, sir.

Q. There is a likelihood that any moderate injury to the leg might refracture that leg?

A. A union such as that might be more easily broken.

Q. A union such as that would not stand the strain a union would in this position (indicating)?

A. It would probably be more easily fractured than the normal bone.

Q. By reason of the overlapped bones they are in the soft tissue, that is, you have the roughened surface lying in [179] soft tissue.

A. Yes, sir.

Q. That makes for muscular weakness?

A. Yes, sir.

Q. When you start to exercise this leg you have

(Testimony of Alexander Barclay, Jr.)

movement of muscles over these roughened areas and with the scarred tissue that has formed you have continued irritation? A. Yes, sir.

Q. That lessens the utility or the functional use of the leg? A. That is right.

Q. He has an involvement of the knee joint?

A. In the right.

Q. There is arthritis now, in that knee?

A. I didn't find it.

Q. Did you find an arthritic change in either knee? A. No, sir.

Q. Did you see the X-ray film of Dr. Grieve giving evidence of the arthritic change?

A. No, sir—if I understood his testimony he defined his arthritic change by crepitation he felt when the knee was moved.

Q. I thought he pointed out on the film?

A. No, he showed evidence of the atrophy of the bone which he says was due to disuse. [180]

Q. Does that amount to arthritic change?

A. No, sir.

Q. You say one leg—one femur that had two bolts? A. Yes, sir.

Q. They show on that film? A. Yes, sir.

Q. There are screws that extend into the soft tissue? A. Yes, sir.

Q. That is a source of irritation?

A. It can be.

Q. To any and all reasonable likelihood it is?

A. Many times I have seen them when the patient never complained and when you try to get the screws out they say "leave them there."

(Testimony of Alexander Barclay, Jr.)

Q. These screws extend about a quarter of an inch beyond the plate? A. Yes, sir.

Q. They extend into the soft tissue?

A. Yes, sir, and evidently it is on the bottom part of the leg where it rests against the chair.

Q. He says he is irritated by it?

A. There was a question in my mind whether it came from the screws or this bony knob on the femur. In all probability it is due more to this bony knob.

Q. That is a part of the fragment of the fracture?

A. Yes, with a lot of increased callus. [181]

Q. It has been suggested that you can open up the site of the fracture and take off the bolts, now, when you take off the bolts you weaken that union?

A. The union is pretty firm now.

Q. As compared with the union on the other side, this (indicating) is in better position?

A. No, I wouldn't say it is in better position. I would say they are equally well healed.

Q. When you open up the leg and take out the bolts, if you remove the bony knob you would increase the scar tissue at the site of the fracture?

A. Yes, sir.

Q. And you damage the muscle sheaths?

A. Not necessarily.

Q. There is a likelihood of it when the scar tissue fills in?

A. It would depend on the approach.

Q. Did you measure his leg? A. Yes, sir.

(Testimony of Alexander Barclay, Jr.)

Q. Did you notice a difference in the measurement of the thigh? A. Yes, sir.

Q. Have you the measurements of the legs with you, Doctor Barclay? A. Yes, sir. [182]

Q. Can you give them to me?

A. The right leg measured $35\frac{3}{8}$ inches, the left one measured 36 inches; that is from the illiac notch to the malleolus.

Q. What is that? A. The ankle.

Q. Did you take the thigh measurements?

A. Yes, sir.

Q. There is a difference, is there?

A. Yes, sir.

Q. And what is that?

A. The right thigh $17\frac{1}{2}$ inches and the left 17; the right calf 14 and the left $13\frac{1}{2}$, so there was an atrophy of the left leg.

Q. That would be caused by non-use?

A. Yes, sir.

Q. Would it also be caused by nerve involvement? A. No, sir.

Q. Did you test him to determine whether he had any neurological signs? A. Yes, sir.

Q. Did you find any? A. No, sir.

Q. He is suffering from muscular weakness in both legs? A. Yes, sir.

Q. In the left more than the right? [183]

A. Yes, sir.

Q. Did you examine his face? A. Yes, sir.

Q. What did that examination disclose?

Mr. Casterlin: Objected to as this is not proper

(Testimony of Alexander Barclay, Jr.)

cross-examination, this was not gone into on examination in chief.

The Court: Objection sustained.

Q. (By Mr. Young): May I make this Doctor my witness—I think, I will not ask that—that is all.

Redirect Examination

By Mr. Casterlin:

Q. Doctor, you say that the sensory loss is in these two fingers (indicating).

A. The little and ring fingers, yes, sir.

Q. When a nerve is torn or stretched it is possible to stretch the sensory portion of the nerve without stretching the motor part? A. No, sir.

Q. So if the nerve is stretched the injury to the motor function is the same as the sensory function?

A. As a general rule.

Q. How could you stretch the sensory portion without stretching the motor?

A. I doubt that it could be done in the ulnar nerve, it [184] could be done in the nerve that governs the sensory fibers only. It is difficult to conceive that it could be done with the ulnar nerve.

Q. In your opinion, Doctor, when you say there will be an improvement in the sensory function, it would necessarily follow that there would be an improvement in the motor function?

A. Yes, sir.

Q. With respect to the screws, and this union of the bone, has nature made any provision for protecting the muscle from extreneous matters of that kind? A. Yes, sir.

(Testimony of Alexander Barclay, Jr.)

Q. Explain that.

A. That was a direct question in regard to this man was it?

Q. Yes.

A. I cannot say that nature has made any provision in his case.

Q. Whenever a foreign substance is imbedded in muscular tissue does nature make any provision for protection against irritation? A. Yes, sir.

Q. What is that?

A. A foreign substance introduced into the muscular tissue is generally walled off by the body to protect it, and it is generally protected in that way. [185]

Q. This walled off protection would take care of any irritation or pain because of the substance?

A. No, it might cause more irritation.

Q. What was the condition you found in Mr. Downum with respect to the screws and the bone union?

A. It is my opinion that the pain and irritation in the back of his leg sitting down is from the callus formation rather than the screws.

Q. You mentioned the proper approach in removing the bolts so far as the resultant scar tissue was concerned. What do you mean, Doctor?

A. That care and forethought must be given in making the incision and care of the tissue you pass through. It would be possible to go in and remove the screws and take out the bolts and practically the only scar tissue would be the line of the

(Testimony of Alexander Barclay, Jr.)

incision. On the other hand, if you went in boldly without foresight and pulled aside whatever you found—muscle and muscle tissue it would be possible to leave lots of scar tissue.

Q. A surgeon has to know his muscles?

A. That's right.

Q. If he does then the resultant scar tissue is minimized? A. Yes, sir.

Q. With respect to the length of the right and the left legs according to the measurements you gave it amounts to $\frac{5}{8}$ inch difference. [186]

A. Yes, sir.

Q. The circumference of the thigh, now, doctor, would there be any equalizing of that in your opinion?

A. If he builds the muscle up there will be.

Q. Suppose there is a one-half inch difference in the size of the thighs, is that unusual in the human body?

A. I would say that it was, yes, sir.

Q. With this man, as time goes on would you expect this measurement to equalize?

A. If he uses the left equally with the right he will develop the muscle.

Q. How about the circumference at the calf?

A. The same goes for that.

Q. This muscular weakness in the leg, is that what you had in mind when you said by exercise there would be a recovery from that weakness?

A. Yes, sir.

Mr. Casterlin: That is all.

(Testimony of Alexander Barclay, Jr.)

Recross-Examination

By Mr. Young:

Q. If the pain is such that he cannot exercise it to a degree sufficient to build up the muscle, then, of course, it would remain stiff or become progressively worse? A. That is correct.

Q. Judging from his picture, his general physical picture [187] here, the fact that one leg is $\frac{5}{8}$ inch shorter than the other and the fact that there is an overlapping of the femur bone, that is the reason for the difference—— A. ——yes, sir.

Q. And the roughened surface of the bones by reason of the overlapping, now, Doctor, is it not your opinion that because of these conditions he will find it extremely difficult to use that leg sufficient to build up the muscle tone?

A. He will build up a lot of muscle tone.

Q. He can improve it? A. Yes, sir.

Q. You don't expect them to become normal?

A. No, sir.

Q. You don't expect the right to be comparable with the left? A. Yes, I do.

Q. You say you expect the right leg to be comparable with the left leg?

A. The left leg is the atrophied leg now. I expect it to reach the right so far as muscular tone is concerned.

Mr. Young: That is all.

Redirect Examination

By Mr. Casterlin:

Q. The right is the shorter leg now?

(Testimony of Alexander Barclay, Jr.)

A. Yes, sir. [188]

Mr. Casterlin: That is all.

Mr. Young: That is all, yes.

Mr. Casterlin: The defendant rests.

The Court: Do you have any rebuttal.

Mr. Young: I will call Mr. Downum in rebuttal.

RAYMOND DOWNUM

Being recalled in rebuttal, having been heretofore duly sworn, testifies as follows:

Direct Examination

By Mr. Young:

Q. Before you were hurt how tall were you?

A. Five foot eleven inches.

Q. How tall are you now?

A. Five foot nine inches.

Q. Now, Mr. Downum, just before this collision you had sold your farm? A. That's right.

Q. What were your plans, what did you intend to do?

A. Our plans were to buy another farm and continue farming.

Q. How long had it been—how long was it after you sold your farm that you were injured?

A. It was about the first of March I sold the farm and I was injured the 14th of May.

Q. You were looking for another place?

A. We intended to as soon as school was out so that we could [189] leave Bonners Ferry.

Q. Your entire training has been that of farmer?

A. That's right.

Q. During the time you were in the hospital

(Testimony of Raymond Downum.)

what change was necessary in the mode of your family living?

A. She had to come to Spokane, at least she did come to Spokane and was at the hospital practically every day until in December.

Q. You didn't keep track of your expenses?

A. No, we didn't.

Mr. Young: That is all.

Mr. Casterlin: No questions.

MRS. EDNA DOWNUM

Called in rebuttal by the plaintiff, after being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. You are the wife of Raymond Downum and one of the plaintiffs in this case?

A. Yes, sir.

Q. Do you know how tall your husband was before this collision? A. Five foot eleven.

Q. Do you know how tall he is now?

A. Five foot nine.

Q. What was the business life of you folks before March? A. Farming. [190]

Q. What were your plans just before this collision occurred?

A. Going back to farming, we didn't know just where; we were going to buy a farm.

Q. What, if any, general expenses were you put to by reason of this collision that you would not otherwise have been put to?

(Testimony of Mrs. Edna Downum.)

Mr. Casterlin: Objected to as being too general.

The Court: Sustained.

Q. What were you required to do that cost you money? A. I went to Spokane.

Q. Did you maintain a home at Spokane?

A. No, sir, I moved to Spokane with the children.

Q. Has your husband been required to make some follow-up trips on account of this injury?

A. Yes, to go to Spokane once a month for a check-up.

Mr. Young: That is all.

Cross-Examination

By Mr. Casterlin:

Q. When were you married? A. 1934.

Mr. Casterlin: That is all.

Mr. Young: That is all. [191]

The Court: Do you have anything further, Mr. Young?

Mr. Young: Nothing, Your Honor, the plaintiff rests.

Mr. Casterlin: Government rests. [192]

State of Idaho,
County of Ada—ss.

I, G. C. Vaughan, hereby certify that I am the official Court Reporter for the District Court in and for the District of Idaho, and I further certify that I am the person who took, in shorthand, the testimony and proceedings in the above-entitled case, and that I thereafter transcribed the same into

longhand, and I further certify that the foregoing transcript consisting of pages numbered 3 to 152 is a true and correct transcript of the testimony given and the proceedings had in and about the trial of the said cause.

In witness whereof I have hereunto set my hand this 5th day of January, 1949.

/s/ G. C. VAUGHAN,
Reporter.

[Endorsed]: Filed Jan. 7, 1949. [193]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the United States of America, defendant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from that certain amended Judgment made and entered herein on November 1, 1948.

JOHN A. CARVER,

United States Attorney for
the District of Idaho,

PAUL S. BOYD,

Assistant U. S. Attorney for
the District of Idaho.

[Endorsed]: Filed Dec. 13, 1948. [194]

[Title of District Court and Cause.]

STATEMENT OF POINTS UNDER
RULE 19

Comes Now the above-named appellant and files its statement of points on which it will rely on the appeal of this matter:

I.

That the Court erred in the award made for pain and suffering in that it is excessive under all of the facts presented in this matter.

II.

That the Court erred in awarding the amount it did for loss of earnings in that the Court was without any basis of fact for such finding.

III.

That the Court erred in using an annuity table alone as a basis for competing the award to compensate for loss of earnings.

IV.

That the Court erred in making an amended finding and award for pain and suffering on the hearing for the Motion to Amend Findings of Fact and Conclusions of Law. [195]

V.

That the Court erred in amending the Findings of Fact and Conclusions of Law to include the award for pain and suffering for the reason that there was nothing before the Court at that time upon which to base such award.

VI.

That the Court erred in making one finding of damages sustained for pain and suffering, personal

injuries, loss of earnings, and permanent physical disability.

VII.

That the Court erred in making a finding for loss of wages in the absence of proof with respect to the damages, impairment of earning capacity and the present worth of each of the future installments of lost earnings suffered by plaintiff.

/s/ JOHN A. CARVER,

United States Attorney for
the District of Idaho,

/s/ PAUL S. BOYD,

Assistant U. S. Attorney for
the District of Idaho.

[Endorsed]: Filed Jan. 7, 1949. [196]

[Title of District Court and Cause.]

PRAECIPE

To Ed. M. Bryan, Clerk of the U. S. District Court:

Please prepare a transcript of the following papers in the above-entitled action for transmission to the Circuit Court of Appeals for the Ninth Circuit:

1. Complaint of plaintiff filed February 24, 1948.
2. Interrogatories to adverse party filed March 26, 1948.
3. Answer filed by defendant April 20, 1948.
4. Answer to Interrogatories propounded by defendant, filed April 21, 1948.
5. Findings of Fact and Conclusions of Law filed June 17, 1948.

6. Judgment filed June 22, 1948.
7. Notice of Appeal filed August 19, 1948.
8. Motion for Order Amending and Correcting Findings of Fact, Conclusions of Law and Judgment, filed by defendant September 29, 1948.
9. Motion to strike, or in the alternative to Amend Findings of Fact.
10. Minutes of the Clerk of the United States District Court for the District of Idaho, dated October 18, 1948, relating to hearing on the matters number 8 and 9.
11. Amended Findings of Fact and Conclusions of Law, filed Nov. 1, 1948.
12. Judgment, filed [197]
13. Reporter's transcript of evidence and proceedings and all exhibits introduced by plaintiff and defendant.
14. Statement of points on which appellant intends to rely.
15. This praecipe.
16. The designation of contents of record on appeal and proof of service.
17. All clerk's minutes.
18. Order, if any, extending time for filing record in appellate court.

/s/ JOHN A. CARVER,
United States Attorney for
the District of Idaho,

/s/ PAUL S. BOYD,
Assistant U. S. Attorney for
the District of Idaho.

[Endorsed]: Filed Jan. 7, 1949. [198]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

Appellant designates the following portions of the record, proceedings, and evidence to be contained in the record on appeal in this action:

1. Complaint of plaintiff filed February 24, 1948.
2. Interrogatories to adverse party filed March 26, 1948.
3. Answer filed by defendant April 20, 1948.
4. Answer to Interrogatories propounded by defendant, filed April 21, 1948.
5. Findings of Fact and Conclusions of Law filed June 17, 1948.
6. Judgment filed June 22, 1948.
7. Notice of Appeal filed August 19, 1948.
8. Motion for Order Amending and Correcting Findings of Fact, Conclusions of Law and Judgment, filed by defendant September 29, 1948.
9. Motion to Strike, or in the alternative to Amend Findings of Fact.
10. Minutes of the Clerk of the United States District Court for the District of Idaho, dated October 18, 1948, relating to hearing on the matters numbered 8 and 9.
11. Amended Findings of Fact and Conclusions of Law, filed Nov. 1, 1948.
12. Judgment, filed

13. Reporter's transcript of evidence and proceedings and all exhibits introduced by plaintiff and defendant.

14. Statement of points on which appellant intends to rely.

15. This designation of contents of record on appeal and proof of service. [199]

16. All clerk's minutes.

17. Orders, if any, extending time for filing record in appellate court.

In preparing the above record, you will please omit the title on all pleadings filed in the cause except on the Complaint, and insert in lieu thereof "title of the court and cause" followed by the name of the pleading or instrument and the date of filing. You will also omit the verifications and note in lieu thereof "duly verified" if the same be verified. You will also omit the acknowledgment of service on all pleadings and other documents.

/s/ JOHN A. CARVER,

United States Attorney for
the District of Idaho,

/s/ PAUL S. BOYD,

Assistant U. S. Attorney for
the District of Idaho.

[Endorsed]: Filed Jan. 7, 1949. [200]

[Title of District Court and Cause.]

MOTION TO EXTEND TIME FOR FILING
RECORD AND DOCKETING APPEAL

The United States of America, the Appellant,
shows to the Court as follows:

I.

Notice of Appeal to the United States Circuit Court of Appeals for the Ninth Circuit was filed herein on December 13, 1948.

II.

The Notice of Appeal was filed for the purpose of protecting the interests of the United States until the Attorney General could determine if the appeal is to be perfected or dismissed.

III.

The Attorney General has not advised this office of its decision and the time for docketing in the Circuit Court will expire on January 22, 1949.

Wherefore, appellant moves the Court for an order extending the time within which the record on appeal may be filed and appeal docketed in the Circuit Court of Appeals until February 21, 1949.

JOHN A. CARVER,

United States Attorney for
the District of Idaho,

PAUL S. BOYD,

Assistant U. S. Attorney for
the District of Idaho.

ORDER

Upon motion of the appellant, good cause appearing therefor,

It Is Ordered that the time within which the record on appeal may be filed and the appeal docketed in the United [201] States Circuit Court of Appeals for the Ninth Circuit be, and the same hereby is, extended to the 21st day of February, 1949.

Dated January 7, 1949.

CHASE A. CLARK,
District Judge.

[Endorsed]: Filed Jan. 11, 1949. [202]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Idaho—ss.

I, Ed. M. Bryan, Clerk of the District Court of the United States, for the District of Idaho, do hereby certify the foregoing typewritten pages numbered 1 to 202, inclusive, to be a full, true and correct copy of so much of the record, papers and proceedings in the above-entitled cause as are necessary to the hearing of the appeal thereon in the United States Circuit Court of Appeals for the Ninth Circuit, in accord with designation of contents of record on appeal of the appellant, as the same remain on file and of record in the office of the Clerk of

said District Court, and that the same constitutes the record on the appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the fees of the Clerk of this Court for preparing and certifying the foregoing typewritten record amount to the sum of \$22.50.

In witness whereof I have hereunto set my hand and affixed the seal of said Court, this 18th day of January, 1949.

(Seal) /s/ ED M. BRYAN,
Clerk.

[Endorsed]: No. 12162. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Raymond Downum and Edna Downum, husband and wife, Appellees. Transcript of Record. Appeal from the United States District Court for the District of Idaho, Northern Division.

Filed January 25, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 12162

UNITED STATES OF AMERICA,

Appellant,

vs.

RAYMOND DOWNUM and EDNA DOWNUM,
husband and wife,

Appellee.

ADOPTION OF POINTS AND DESIGNATION
OF RECORD FOR PRINTING

Comes Now the United States of America, appellant, and in compliance with Rule 19, Subdivision 6, hereby adopts as its points the Statement of Points filed in the District Court on January 7, 1949, and which appear in the transcript of record, and appellant hereby designates the entire transcript of record for printing as provided in said rule.

/s/ JOHN A. CARVER,

United States Attorney for
the District of Idaho,

/s/ PAUL S. BOYD,

Assistant U. S. Attorney for
the District of Idaho.

[Endorsed]: Filed February 9, 1949. Paul P. O'Brien, Clerk.

